United States Court of Appeals

for the Second Circuit

JOINT APPENDIX

76-7099

IN THE

United States Court of Appeals

FOR THE SECOND CIRCUIT.

Docket Nos. 76-7099, 76-7100

REA EXPRESS, INC.,

Plaintiff-Appellant,
Cross-Appellee,

v.

INTERWAY CORPORATION and
INTEGRATED CONTAINER SERVICE, INC.,

Defendants-Appellees,

INTERWAY CORPORATION,

Defendant-Cross-Appellant.

On Appeal From Judgment of the United States District Court for the Southern District of New York Civil Action No. 73 Civ. 560 (CLB).

JOINT APPENDIX.

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UNITED STATES COURT OF APPEALS
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Relevant Docket Entries

Rea Express Inc. vs. Interway Corp., et ano. 73 Civ. 500

DATE	PROCEEDINGS
	2 JUDGE BRIEANT, U.S.D.J.
eb 6.73	Filed PAPERS ORIGINALLY FILED IN U.S.D.C. EASTERN DIST. OF PENNSYLVANIA Their No. 72 Civil 1042 were this date filed, COMPLAINT-SUMMONS - STIP & ORDER- MOTION-
	RECORD OF PROCEEDING IN U.S.D.C S.D.N.Y.
ar 20.73	Filed Notice of Appearance for Dfts.
ar 20.73	Filed ANSWER & Counterclaim of Dfts.
ar 20.73	Filed First Set of Interrogs. propounded by dfts.
ep.13-73	Filed notice of appearance of Arthur M.Wisehard additional counsel for pltf.
Sep 13-73	Filed pltffs interrogatories to defts (set 1)
Sep 13-73	Filed answers of pltffs to defts interrogatories (set 1)
Sep 13-73	Filed answer of pktff to counterclaim.
ct. 12-73	Filed stip. & order extending defts' time to answer or object to interrogs. to 11-15-73--Brieant,J.
ov. 19-73	Filed defts' answers & objections to pltff's interrogs. (set 1)
ov. 19-73	Filed defts' notice to take deposition
ov. 19-73	Filed defts' 2nd set of interrogs.
ec. 20-73	Filed stip. & order extending time of pltff. to answer 2nd set of interrogs. to 1-15-74--Brieant,J.
an. 18-74	Filed pltff's supplemental answers to interrogs. (1st set)
an. 24-74	Filed pltff's answers to interrogs. (2nd set)
an. 22-74	Filed defts' 3rd set of interrogs.
eb. 15-74	Filed defts' notice to take deposition
eb. 22-74	Filed pltff's notice to take deposition of Michael Kluge
Mar 5 74	Pre-trial conference held
pr.5-74	Filed pltfs. notice of deposition of Richard Norton.
ay 7-74	Filed deft's notice to take deposition of Wm. J. Taylor, 5-21-74.
ay 13-74	Filed amended and supplemental complaint.
ay 14-74	Filed stip and order allowing pltf. to file Amended and supplemental complaint before May 13.74. BRIEANT,J.
ay23-74	Filed pltffs interrogs. to defts set #2.
ay 23-74	Filed pltffs answer to deft's 3rd set of interrogs.
ay 29-74	Filed pltffs notice to take deposition of Sol Katz.
y 29-74	Filed pltffs notice to take deposition of Richard Luehman. Issued subpoena.
May 29-74	Filed pltffs notice to take deposition of Price, Waterhouse & Co. Issued subpoena.
ay 24-74	Filed ANSWER by deft to amended & supplemental complt. & amended counterclaim.
Jun.6-74	Filed deposition of William J. Taylor.
un.10-74	Filed pltffs notice to take deposition of Richard Luhmann.
un.18-74	Filed pltffs reply to amended counterclaim.
un.19-74	Filed pltffs notice to take deposition of Price, Waterhouse.
Jul.5-74	Filed defts answers to interrogs. (set 2).
Jul.8-74	Filed pltffs notice to take deposition of Sol Katz.
eb 4-75	Filed Stip. of Facts & Order.....So Ordered....Brieant,J.
eb 4-75	Filed PRE-TRIAL with consent.....Brieant,J.
eb 25-75	Filed Stip. & Order relating to Documentary evidence....Breiant,J.
AR 3-75	NON-JURY TRIAL BEGUN & CONTINUED
AR 4-75	TRIAL CON'T
AR 5-75	TRIAL CON'T & CONCLUDED — 3 DAY TRIAL
-19-75	Filed Defts' Post Trial Memo. to Judge
-19-75	Filed Pltff's Brief.
	Filed transcript of record of proceedings, dated March 3,4,5,1975

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Relevant Docket Entries

DATE	PROCEEDINGS
5-30-75	Filed Pltff's Reply Brief
5-30-75	Filed Post-Trial Reply Memo of Defts.
1-20-76	Fld Fincings and Conclusions#3754.....Accordingly, the judgment to be entered shall provide that no execution or levy may be made upon any of REA's property unless and until specifically authorized by the Bkrucy Judge haveing jurisdiction over REA's affairs....Settle judgment on notice to counsel appearing in this action, and also on notice to the trustee in bankruptcy of REA or the his atty. No Costs.....Brisant,J. mn
1-30-76	Fld Judgment #76,099....Ordered that pltff REA Exp take nothing in this action and that its amended and suppl complt is dismissed on the merits... and...that deft Inerway Corp recover of pltff REA the sum of $127,472 on its ccounterclaims asserted herein, together with interest from the date of this judgment until paid and Ordered that no costs shall be awarded herein...ant that deft Interway Corp is barred from executing or levying upon or otherwise seeking to enforee the judgmenthereby rendered unless and until specifically authorized by the Bank Judge having jurisdiction over the affairs of REA Exp. Inc in a bankruptcy proceeding pending in this Court bearing Index No 75 B 253....Brisant,J. mn .....Judgment Ent-1-30-76 Clerk ent 2-4-76.
2-25-76	Fld Pltff's Notice of Appeal to USCA from Judgment ent 1-30-76...Notices mailed on 2-26-76 to:Wintrbrop Stimson Putnam & Roberts.
2-27-76	Fld Deft Interway Corp's Notce of Cross Appeal of judgent ent 1-30-76.. Notices mailed on 3-1-76 to:A. M. Wisehart; Wolf, Block, Schorr and Solis-Cohen; Whitman & Ransom; Marcus & Angel
3-30-76	Filed stipulation as to exhibits to be transmitted to the U.S.C.A.
4-9-76	Filed stipulation re: inclusion of copies of originally filed documents which are presently missing.

A TRUE COPY
RAYMOND F. BURGHARDT, Clerk
By G Harrison
Deputy Clerk

D

D. C. 109 Criminal Continuation Sheet

Amended and Supplemental Complaint

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

REA EXPRESS, INC.,	:	
Plaintiff,	:	
v.	:	73 Civ. 560 (CLB)
INTERWAY CORPORATION; INTEGRATED CONTAINER SERVICE, INC.,	:	
Defendants.	:	

AMENDED AND SUPPLEMENTAL COMPLAINT

Count I

1. Plaintiff REA Express, Inc. is a Delaware corporation with its principal place of business at 219 East 42nd Street, New York, New York 10017.

2. Defendant Interway Corporation (Interway) is a Delaware corporation with its principal place of business at 522 Fifth Avenue, New York, New York. Defendant Interway is a holding company which owns all of the stock of defendant Integrated Container Service, Inc. and Realco Services, Incorporated. Prior to May 1971, Interway was called Integrated Container Service Industries Corporation (ICSI).

3. Defendant Integrated Container Service, Inc. (ICS-Del) is a Delaware corporation with its principal place of busi-

ness at 522 Fifth Avenue, New York, New York. ICS-Del is the successor in interest by merger to Integrated Container Service, Inc. (ICS), a Pennsylvania corporation. ICS-Del was formed, ICS merged into it and then dissolved in October 1968 as part of the transaction complained of in this action. ICS-Del is in the business of leasing containers to the steamship industry.

4. This action is brought under section 10(b) of the Securities Exchange Act of 1934 as amended, 15 U.S.C. §78j, and Rule 10b-5, 17 C.F.R. §240.10b-5, adopted by the Securities and Exchange Commission pursuant to section 10(b) and section 23(a), 15 U.S.C. §78w, of the Securities Exchange Act of 1934.

5. This Court has jurisdiction of this action under section 27 of the Securities Fxchange Act of 1934, 15 U.S.C. §78(aa), under 28 U.S.C. §1337 and under the doctrine of pendent jurisdiction.

6. Various material acts and transactions which constitute the violations charged in this action occurred in the Southern District of New York and were accomplished directly or indirectly by the use of the mails and other instrumentalities of interstate commerce.

7. For some time prior to October 1968, plaintiff owned all of the stock of REA Leasing Corporation (Realco).

8. On September 23, 1968, ICS offered to purchase the stock of Realco and the subordinated debt of Realco to plaintiff on the following terms:

(a) ICS would pay plaintiff $32,400,000 for fifty-one (51%) percent of the stock of Realco and the subordinated debt (which was in the amount of $2,400,000);

(b) ICSI, a holding company, would be formed to

hold all of the stock of ICS and all of the stock of Realco purchased by ICS;

(c) ICS would give plaintiff the option (which would expire in July 1969) to sell the remaining forty-nine (49%) percent of the stock of Realco to ICSI for convertible preferred stock of ICSI at a specified ratio. Said stock was entitled to three annual stock dividends;

(d) in connection with the exercise of the conversion privilege inhering in the preferred shares, the holder would be entitled, on ninety (90) days' notice, to require ICSI to register, pursuant to the Securities Act of 1933, the common shares into which the preferred stock was convertible.

9. On October 11, 1968, plaintiff, in reliance upon the representations made in the ICS offer, entered into formal agreements whereby ICS was to purchase fifty-one (51%) percent of the stock of Realco and plaintiff was to have the option to sell the remaining forty-nine (49%) percent of the stock to ICSI. The transaction was closed on November 1, 1968.

10. As part of the above transaction, in October 1968, ICS-Del was formed, ICS was merged into it and thereafter dissolved.

11. On January 15, 1969, plaintiff exercised its option to sell thirteen (13%) percent of Realco to ICSI. The option was exercised after ICSI filed a registration statement for a public offering on December 31, 1968. In the public offering in March 1969, plaintiff sold the ICSI stock which it received for thirteen (13%) percent of Realco, after conversion for $7,860,000.

12. On June 23, 1969, plaintiff sold its remaining interest in Realco to ICSI. In consideration, plaintiff received $4,714,290 and 143,674.44 shares of ICSI preferred stock.

13. Since June 23, 1969, plaintiff received dividends of 21,550.56 shares of ICSI preferred stock.

14. On June 14, 1971, and on various occasions thereafter, plaintiff made a continuing demand that Interway register, pursuant to the Securities Act of 1933, the common stock into which plaintiff's preference shares were convertible so that plaintiff could dispose of its holdings of preferred stock. Interway refused and plaintiff was unable to dispose of its holdings until February 26, 1974, at which time plaintiff received net proceeds of only $2,701,213 from the sale of the preferred stock to Interway.

15. In order to induce plaintiff to accept its offer and enter into the agreements hereinbefore described, ICS falsely and fraudulently misrepresented to plaintiff that:

(a) the ICSI securities which plaintiff could acquire by exercise of its option would have a market value of at least $40,000,000;

(b) ICS-Del would have earnings in 1968 of $2,000,000 and in 1969 of $4,000,000;

(c) the business of ICS was highly profitable and rapidly expanding;

(d) ICSI would have sufficient lines of credit to conduct its business.

16. In 1969, ICSI had a consolidated income of $1,793,000, most of which came from the earnings of Realco. In 1970, ICSI reported a loss of $306,700; ICS-Del itself suffered a loss of $2,594,100.

17. ICS knew or should have known that its projections

and representations were false and fraudulent. In particular, ICS knew or should have known:

(a) that the contract representing over twenty (20%) percent of its income in 1968 was going to be cancelled;

(b) that some of its customers including one of its major customers, U. S. Lines, were likely to purchase their own containers instead of leasing them;

(c) that there were serious labor problems facing ICS which related to the nature and growth of its business;

(d) that the method of business of ICS and services required by its customers were about to change and that competition was increasing.

18. In connection with its offer to purchase Realco, ICS omitted to disclose the above material facts as well as various conflicts of interest among its shareholders, directors and officers. Even if the representations hereinbefore alleged were not in themselves fraudulent, the omission of such disclosures rendered the representations misleading.

19. The acts, misrepresentations and omissions of defendants in connection with this transaction are in violation of section 10(b) of the Securities Act of 1934 and Rule 10b-5 thereunder.

20. As a result of defendants' fraudulent misrepresentations, plaintiff has suffered losses in the amount of $24,724,497.

Count II

21. The allegations of paragraphs 1 through 20 are repeated and realleged by reference.

22. Interway's refusal from June 14, 1971 until February 26, 1974 to register, pursuant to the Securities Act of 1933, the ICSI common stock into which plaintiff's shares of preferred stock were convertible was in conscious and deliberate violation of plaintiff's rights under the agreement between the parties, with full knowledge of the severe consequential damages imposed on plaintiff by virtue of plaintiff's need for cash in the operations of its business and of plaintiff's inability to sell its holdings while they remained unregistered.

23. By the terms of the agreement between the parties, the redemption price which Interway was to pay in the event of a compelled surrender of plaintiff's shares was $105 per share, which would have amounted to $17,348,625 for the 165,225 shares of preferred stock held by plaintiff as of June 14, 1971.

24. Interway's deliberate refusal to perform its obligation to register the common shares into which plaintiff's preferred stock was convertible made the shares worthless to plaintiff and gave to Interway all of the benefits of a redemption, including the ultimate transfer of legal title, but plaintiff received only $2,701,213 for said transfer of legal title, thus inflicting damage on plaintiff in the amount of $14,622,412.

Count III

25. The allegations of paragraphs 1 through 24 are repeated and realleged by reference.

26. On February 26, 1974, plaintiff sold its holdings of preferred stock to Interway for a net price of $2,701,213,

substantially below the market value of the common stock into which the preferred stock was convertible.

27. Plaintiff was forced to consummate said transaction because of plaintiff's continuing serious need for cash in the operations of its business and because Interway's continued refusal to register the common stock made Interway the only practical purchaser of the preferred convertible stock, all of which was known and foreseen by Interway.

28. If Interway had in due course performed its registration obligation, plaintiff could have converted its preferred shares and sold its resultant common shares in March 1972 at a price of at least $16 per share, which is equivalent to a price of at least $24 per preferred share, for a total of $3,965,000, thus realizing $1,263,787 more than was received from Interway in February 1974.

29. At or about the very time that plaintiff was forced to sell to Interway at a price equivalent to about $11 per common share, the market price which would have been available in the event of performance by Interway of Interway's registration obligation was in excess of $16 per common share.

30. During the period from March 1972 to February 1974 plaintiff was forced to borrow money at average interest rates in excess of ten (10%) percent per year, so that plaintiff's inability in March 1972 to realize $3,965,000 from its Interway shares has cost plaintiff in excess of $793,000, which cost and the costs of this suit, including attorneys' fees, were the direct and foreseeable consequences of Interway's deliberate repudiation of its registration obligation.

WHEREFORE, plaintiff demands damages pursuant to Count I in the amount of $24,724,497, or in the alternative pursuant to

Count II in the amount of $14,622,412, or in the alternative pursuant to Count III in the amount of $2,056,787, plus interest, together with the costs of suit, including reasonable attorneys' fees and such other and further relief as this Court may deem just and proper.

Dated: May 9, 1974

New York, New York

Arthur M. Wisehart
REA Express, Inc.
219 East 42nd Street
New York, New York 10017

Franklin Poul
Judith R. Cohn
Wolf, Block, Schorr and
Solis-Cohen
12th Floor, Packard Building
Philadelphia, Pennsylvania
19102

5-5/24

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

REA EXPRESS, INC., Plaintiff,	:	73 Civ. 560 (CLB)
-against-	:	
INTERWAY CORPORATION; INTEGRATED CONTAINER SERVICE, INC., Defendants.	:	ANSWER TO AMENDED AND SUPPLEMENTAL COMPLAINT, AND AMENDED COUNTERCLAIM OF DEFENDANTS

Defendants Interway Corporation ("Interway") and Integrated Container Service, Inc. ("ICS-Del.") (hereinafter collectively referred to as "defendants"), by their attorneys, Winthrop, Stimson, Putnam & Roberts, for their answer to the amended and supplemental complaint herein (the "complaint") allege as follows:

IN ANSWER TO COUNT I OF THE COMPLAINT

1-2. Defendants admit the allegations of paragraphs 1 and 2 of the complaint.

3. Answering the allegations of paragraph 3 of the complaint, defendants admit that ICS-Del. is a Delaware corporation which has its principal place of business at 522 Fifth Avenue, New York, New York. Defendants further admit that Integrated Container Service, Inc., a Pennsylvania corporation ("ICS-Pa."), transferred its assets and business (subject to its liabilities) to ICS-Del. in October 1968 in return for all of the capital stock of ICS-Del. Defendants further admit that ICS-Pa.

was merged into Integrated Container Service Industries Corporation ("ICSI") (now known as Interway) in October 1968. Defendants further admit that ICS-Del. is in the business of leasing to others cargo containers and accessory equipment used by carriers for the transportation of freight. Except as herein expressly admitted, defendants deny each and every allegation of paragraph 3 of the complaint.

4. Answering the allegations of paragraph 4 of the complaint, defendants admit that this action is purportedly brought under Sections 10(b) and 23(a) of the Securities Exchange Act of 1934, and Rule 10b-5 adopted by the Securities and Exchange Commission. Except as herein expressly admitted, defendants deny each and every allegation of paragraph 4 of the complaint.

5. Answering the allegations of paragraph 5 of the complaint, defendants admit that the jurisdiction of this Court is purportedly based on Section 27 of the Securities Exchange Act of 1934 and 28 U.S.C. § 1337, and under the doctrine of pendent jurisdiction. Except as herein expressly admitted, defendants deny each and every allegation of paragraph 5 of the complaint.

6. Answering the allegations of paragraph 6 of the complaint, defendants admit that various acts and transactions referred to in the complaint occurred in the Southern District of New York. Except as herein expressly admitted, defendants deny each and every allegation of paragraph 6 of the complaint.

7. Defendants admit on information and belief the allegations of paragraph 7 of the complaint.

8. Answering the allegations of paragraph 8 of the complaint, defendants admit that, by a letter to plaintiff REA Express, Inc. ("REA") dated September 23, 1968, ICS-Pa. made an offer to purchase the stock of Realco Services Incorporated

("Realco"), then known as REA Leasing Corporation, and certain subordinated debt owed by Realco to REA. Defendants refer to said letter for a statement of its contents. Except as herein expressly admitted or otherwise treated, defendants deny each and every allegation of paragraph 8 of the complaint.

9. Answering the allegations of paragraph 9 of the complaint, defendants admit that on October 11, 1968 REA and ICS-Pa. entered into formal agreements with respect to the sale of, or option to sell, the stock of Realco. Defendants refer to said agreements for a statement of their provisions. Defendants further admit that a closing took place on November 1, 1968, at which ICSI purchased 51% of the stock of Realco, and certain subordinated debt owed by Realco to REA, for $30,400,000. Except as herein expressly admitted or otherwise treated, defendants deny each and every allegation of paragraph 9 of the complaint.

10. Answering the allegations of paragraph 10 of the complaint, defendants admit that ICS-Del. was organized in October 1968 and that ICS-Pa. was merged into ICSI. Except as herein expressly admitted, defendants deny each and every allegation of paragraph 10 of the complaint.

11. Answering the allegations of paragraph 11 of the complaint, defendants admit that on December 31, 1968 ICSI filed a registration statement, including a preliminary prospectus, for a public offering of shares of common stock of ICSI. Defendants further admit that, by letter dated January 15, 1969, REA exercised the option which it had under the October 11, 1968 agreement to sell an additional 13% of the Realco stock to ICSI. Defendants further admit that, in a public offering made on March 6, 1969, REA sold the 175,102 shares of common stock of ICSI which it received after conversion of the convertible preference stock of ICSI obtained upon exercise of the option, and that

REA received net proceeds of $7,897,100 for said shares. Except as herein expressly admitted, defendants deny each and every allegation of paragraph 11 of the complaint.

12. Answering the allegations of paragraph 12 of the complaint, defendants admit that on June 23, 1969, REA and ICSI entered into an agreement relating to the sale to ICSI of the 36% of the Realco stock still held by REA. Defendants further admit that pursuant to such agreement REA received from ICSI $4,714,290 and 143,673 shares of ICSI convertible preference stock. Except as herein expressly admitted, defendants deny each and every allegation of paragraph 12 of the complaint.

13. Answering the allegations of paragraph 13 of the complaint, defendants admit that since June 23, 1969 dividends totaling 21,552 shares of ICSI convertible preference stock have been paid by ICSI on the 143,673 shares of ICSI convertible preference stock which REA received in June 1969. Except as herein expressly admitted, defendants deny each and every allegation of paragraph 13 of the complaint.

14. Answering the allegations of paragraph 14 of the complaint, defendants admit that Interway received a letter from REA dated June 14, 1971, and that Interway received subsequent letters from REA relating to the subject of the June 14, 1971 letter. Defendants refer to said letters for a statement of their contents. Defendants further admit that on February 26, 1974 REA sold to Interway 165,225 shares of Interway's convertible preference stock for a total consideration of $2,726,212.50. Except as herein expressly admitted or otherwise treated, defendants deny each and every allegation of paragraph 14 of the complaint.

15. Defendants deny each and every allegation of paragraph 15 of the complaint.

16. Answering the allegations of paragraph 16 of the complaint, defendants admit that in 1969 ICSI had a consolidated net income of $1,793,000 and that the operations of Realco contributed substantially to such income. Defendants further admit that in 1970 ICSI had a consolidated net loss of $306,700, and ICS-Del. had a net loss of $2,549,100, after extraordinary charges, net of deferred income taxes. Except as herein expressly admitted, defendants deny each and every allegation of paragraph 16 of the complaint.

17-20. Defendants deny each and every allegation of paragraphs 17 through 20, inclusive, of the complaint.

IN ANSWER TO COUNT II OF THE COMPLAINT

21. Answering the allegations of paragraph 21 of the complaint, defendants repeat and reallege each and every allegation of paragraphs 1 through 20, inclusive, of this answer with the same force and effect as if herein set forth in full.

22. Defendants deny each and every allegation of paragraph 22 of the complaint.

23. Answering the allegations of paragraph 23 of the complaint, defendants refer to the formal agreements between REA and ICS-Pa. for a statement of their provisions. Except as herein otherwise treated, defendants deny each and every allegation of paragraph 23 of the complaint.

24. Defendants deny each and every allegation of paragraph 24 of the complaint.

IN ANSWER TO COUNT III OF THE COMPLAINT

25. Answering the allegations of paragraph 25 of the complaint, defendants repeat and reallege each and every allegation

of paragraphs 1 through 24, inclusive, of this answer with the same force and effect as if herein set forth in full.

26. Answering the allegations of paragraph 26 of the complaint, defendants admit that on February 26, 1974 REA sold to Interway 165,225 shares of Interway's convertible preference stock for a total consideration of $2,726,212.50. Except as herein expressly admitted, defendants deny each and every allegation of paragraph 26 of the complaint.

27. Answering the allegations of paragraph 27 of the complaint, defendants deny that they have knowledge or information sufficient to form a belief as to the truth of the allegation that plaintiff sold convertible preference stock to Interway because of plaintiff's continuing serious need for cash in the operations of its business. Except as herein otherwise treated, defendants deny each and every allegation of paragraph 27 of the complaint.

28-29. Defendants deny each and every allegation of paragraphs 28 and 29 of the complaint.

30. Answering the allegations of paragraph 30 of the complaint, defendants deny that they have knowledge or information sufficient to form a belief as to the truth of the allegation that during the period from March 1972 to February 1974 REA borrowed money at average interest rates in excess of 10% per year. Except as herein otherwise treated, defendants deny each and every allegation of paragraph 30 of the complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE TO COUNT I OF THE COMPLAINT, DEFENDANTS ALLEGE:

31. On October 11, 1968 REA and ICS-Pa. entered into agreements with respect to the sale of the stock of Realco, then

a wholly-owned subsidiary of REA. The agreements provided that 51% of the stock of Realco, and certain subordinated debt of Realco to REA, would be sold for $32,400,000, and such sale took place on November 1, 1968. In addition, REA was given an option until July 11, 1969 to sell any or all of the remaining 49% of the Realco stock for specified amounts of preference stock of ICSI which was convertible into ICSI common stock. By letter dated January 15, 1969 REA elected to exercise this option with respect to 13% of the Realco stock still held by it, and requested ICSI to use its best efforts (a) to register under the Securities Act of 1933 the 175,102 shares of common stock to be received by REA on conversion of the 116,735 shares of convertible preference stock which would be obtained by such exercise of the option, and (b) to include such 175,102 shares in a proposed underwritten public offering of shares of common stock of ICSI, of which ICSI had informed REA. On January 15, 1969 the bid price for the common stock of ICSI in the over-the-counter market was $54 a share, as compared with $64 a share on October 11, 1968 and on November 1, 1968. In accordance with REA's request, such 175,102 shares of common stock were sold in a public offering on March 6, 1969 at a price to the public of $48 a share, REA receiving proceeds of $45.10 a share after underwriting discounts and commissions.

32. By letter dated June 10, 1969 REA informed ICSI that it elected to exercise the option which it held under the agreement of October 11, 1968 by transferring to ICSI an additional 750 shares, or 15%, of the stock of Realco in exchange for 134,694 shares of ICSI convertible preference stock. REA also requested ICSI to use its best efforts to register under the Securities Act of 1933 the 202,041 shares of common stock

of ICSI to be received by REA on conversion of such 134,694 shares of convertible preference stock.

33. As of the time that REA took the action referred to in paragraph 32 of this answer, it had made no complaint whatsoever to ICSI concerning the purported misrepresentations and failures to make disclosure as to the financial condition and prospects of ICSI which had allegedly occurred in connection with the October 11, 1968 agreements, and of which it now complains in this action, notwithstanding the following:

(a) By its interim report to shareholders for the three months ended March 31, 1969, and by the issuance of a press release, ICSI had announced that its net income for the first three months of 1969 were $228,000, or 11¢ per share of common stock, as compared with $419,000, or 21¢ per share of common stock, for the first three months of 1968.

(b) On May 27, 1969 an action had been commenced in the United States District Court for the Southern District of New York entitled William B. Weinberger v. Integrated Container Service Industries Corporation, et al. (69 Civ. 2284) (the "Weinberger action"). REA itself was named as one of the defendants in this action and was served with process on or about May 29, 1969. The action, which was brought under the provisions of the Securities Act of 1933 and the Securities Exchange Act of 1934, and the Rules and Regulations issued thereunder, alleged that the registration statement and prospectus of ICSI dated March 6, 1969, pursuant to which a public offering had been made of 550,102 shares of common stock of ICSI, including 175,202 shares sold for the account of REA, contained untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading. The complaint

in the Weinberger action specifically referred to alleged misrepresentations and omissions as to the financial condition and prospects of ICSI, including the results of operations during the first quarter of 1969. The complaint also attacked the accuracy of the explanation for the decline in net income during the first three months of 1969 which was set forth in the interim report to shareholders for such period.

(c) On June 10, 1969 the bid price for the common stock of ICSI in the over-the-counter market was 23-1/2, in contrast to the bid prices of 64 on October 11, 1968 and on November 1, 1968, when the closing took place pursuant to the October 11, 1968 agreements.

34. On June 13, 1969 ICSI informed REA that it would use its best efforts to register under the Securities Act of 1933 the 202,041 shares of common stock referred to in paragraph 32 of this answer.

35. On June 23, 1969, after extensive negotiations, REA and ICSI entered into a new agreement pursuant to which ICSI would acquire the remaining 1,800 shares, or 36%, of Realco stock which was still owned by REA, including the 750 shares referred to in REA's letter of June 10, 1969. Such agreement provided that ICSI would pay REA $4,714,290 for 1,000 shares of Realco stock, and that the balance of 800 shares of Realco stock would be transferred to ICSI in exchange for 143,673 shares of ICSI convertible preference stock, in accordance with the option granted REA by the October 11, 1968 agreement. The terms of the agreement were carried out, and ICSI acquired the 1,800 shares of Realco stock for the considera-

tion specified. As of June 23, 1969, REA was fully familiar with ICSI's results of operations for the first quarter of 1969, as referred to in paragraph 33(a) of this answer, the Weinberger action referred to in paragraph 33(b) of this answer, and the steep decline in the price of the common stock of ICSI from the price prevailing on October 11, 1968, the bid price for such stock being 18 on June 23, 1969 and the preceding business day. It nevertheless agreed to the terms of the June 23, 1969 agreement, although prior thereto it had no contractual commitment to sell to ICSI any of such 36% of Realco stock still owned by it.

36. At no time prior to the execution of the June 23, 1969 agreement, or prior to the purchase of the 1,800 shares of Realco stock pursuant thereto, did REA inform ICSI that it believed material misrepresentations and omissions had occurred in connection with the October 11, 1968 agreement.

37. Prior to the execution of the June 23, 1969 agreement, ICSI had no obligation to REA to pay $4,714,290 for 20% of the Realco stock, and indeed had no obligation to REA to pay any cash for any shares of Realco stock still held by REA. ICSI never would have agreed to the provisions of the June 23, 1969 agreement had REA prior to such date made known to ICSI its contention that it had been wrongfully induced to enter into the October 11, 1968 agreement with respect to the sale of Realco.

38. On or about July 18, 1969 REA, through its counsel, served and filed its answer in the Weinberger action, and denied the allegations in the complaint that material misrepresentations

and omissions as to the financial condition and prospects of ICSI, including the results of operations during the first quarter of 1969, had been made in the ICSI prospectus of March 6, 1969 and in the interim report to shareholders for the first three months of 1969.

39. In August of 1969 ICSI reported to its shareholders, including REA, that its consolidated net income for the first six months of 1969 was $937,000, or 43¢ per share of common stock, as compared with $998,000, or 50¢ per share of common stock, for the comparable period of 1968.

40. On or about November 1, 1969 ICSI paid a dividend of 7,184 shares of convertible preference stock on the 143,673 shares of such stock received by REA pursuant to the June 23, 1969 agreement, which dividend was accepted and retained.

41. In November of 1969 ICSI reported to its shareholders, including REA, that its consolidated net income for the first nine months of 1969 was $1,571,000, or 68¢ per share of common stock, as compared with $1,613,000, or 81¢ per share of common stock, for the comparable period of 1968. ICSI further reported that lower utilization of the container and allied equipment of ICS-Del. was a major factor in reducing earnings for the third quarter of 1969.

42. On or about December 31, 1969 an action was commenced in the United States District Court for the Northern District of Illinois entitled Maurice Rosenfield, et al. v. Integrated Container Service Industries Corporation, et al. (69 C 2694) (the

"Rosenfield action"). REA itself was named as one of the defendants in this action and was served with process in January 1970. The action, which was brought under the provisions of Sections 11, 12(2) and 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934, and Rule 10b-5 adopted by the Securities and Exchange Commission, alleged that the registration statement and prospectus of ICSI dated March 6, 1969 contained untrue statements of material facts and omitted to state material facts. The complaint in the Rosenfield action specifically referred to alleged misrepresentations and omissions as to the financial condition and prospects of ICSI, including failure to make disclosure as to: (a) serious labor problems facing ICS-Del. which related to the nature and growth of its business, (b) changes in the method of business of ICS-Del., and (c) increasing competition confronting ICS-Del. The complaint further alleged that during 1969 ICSI had suffered serious financial deterioration. At the time the Rosenfield action was commenced, the bid price for the common stock of ICSI was approximately 15.

43. In early 1970 ICSI reported to its shareholders, including REA, that it had a consolidated net income of $1,793,000, or 75¢ per share of common stock, in 1969, as compared with $1,999,000, or $1.00 per share of common stock, in 1968. It further reported on the factors which had caused a 2.6% reduction in revenue of ICS-Del., in contrast to the substantial growth pattern experienced in previous years.

44. On or about May 7, 1970 REA, through its counsel,

served and filed its answer in the Rosenfield action, which had theretofore been transferred to the United States District Court for the Southern District of New York pursuant to 28 U.S.C. § 1404(a), and docketed as 70 Civ. 998. In such answer it denied the allegations of the complaint that material misrepresentations and omissions as to the financial condition and prospects of ICSI had been made in the ICSI prospectus of March 6, 1969. REA also denied that the prospectus was deficient for failure to make disclosure as to: (a) serious labor problems facing ICS-Del. which related to the nature and growth of its business, (b) changes in the method of business of ICS-Del., and (c) increasing competition confronting ICS-Del.

45. On or about November 1, 1970 ICSI paid a dividend of 7,184 shares of convertible preference stock on the 143,673 shares of such stock received by REA pursuant to the June 23, 1969 agreement, which dividend was accepted and retained.

46. In early 1971 ICSI reported to its shareholders, including REA, that it had a consolidated net loss, after extraordinary charges net of deferred income taxes, of $306,700 for 1970.

47. On or about February 18, 1971 a consolidated amended complaint was served on counsel for REA in the Weinberger and Rosenfield actions, which had been consolidated pursuant to court order. Such complaint, which was based on Sections 11, 12(2) and 17(a) of the Securities Act of 1933, Section 10(b) of the Securities and Exchange Act of 1934, and Rule 10b-5 adopted by the

Securities and Exchange Commission, alleged that the registration statement and prospectus of ICSI dated March 6, 1969 contained untrue statements of material facts and omitted to state material facts. Such complaint specifically referred to alleged misrepresentations and omissions as to the financial condition and prospects of ICSI, including failure to make disclosure as to: (a) the cancellation in 1969 of a business arrangement which had generated over 20% of the revenues of ICS-Del. in 1968; (b) the likelihood that United States Lines, Inc., one of ICS-Del.'s largest customers, would diminish its business dealings with ICS-Del.; (c) the likelihood that customers of ICS-Del. would purchase their own containers instead of leasing them; (d) serious labor problems facing ICS-Del. which related to the nature and growth of its business; (e) changes in the method of business of ICS-Del.; (f) increasing competition confronting ICS-Del.; (g) alleged conflicts of interest among the shareholders, directors and officers of ICSI; and (h) the inadequacy of credit sources to conduct ICSI's business. On or about July 28, 1970 plaintiffs in the Rosenfield action had served counsel for REA with a motion seeking leave to serve and file an amended complaint which was substantially similar to the consolidated amended complaint referred to above. By letter dated June 23, 1970 counsel for plaintiffs in the Rosenfield action had furnished counsel for REA with a copy of the proposed amended complaint.

48. By letter dated June 14, 1971 REA requested Interway (formerly ICSI) to register under the Securities Act of 1933 the common stock which it would receive upon conversion of the 158,041

shares of convertible preference stock which REA stated it held. As of such date the bid price for the common stock of ICSI was approximately 14.

49. In response to such letter Interway informed REA of the conditions which had to be satisfied before it would be in a position to honor the request for registration. REA objected to certain of the conditions and agreed to comply with other of the conditions, but never did so. It then sought a no-action letter from the Securities and Exchange Commission (the "Commission") permitting it to sell all or part of the shares of common stock of Interway to be received upon conversion of the convertible preference stock without registration under the Securities Act of 1933. The Commission declined to issue such a no-action letter.

50. On or about September 17, 1971 REA, through its counsel, served and filed its answer to the consolidated amended complaint in the Weinberger and Rosenfield actions. In such answer it denied the allegations in such complaint that material misrepresentations and omissions as to the financial condition and prospects of ICSI had been made in the ICSI prospectus of March 6, 1969. REA also denied that the prospectus was deficient for failure to make disclosure as to: (a) the cancellation in 1969 of a business arrangement which had generated over 20% of the revenues of ICS-Del. in 1968; (b) the likelihood that United States Lines, Inc., one of ICS-Del.'s largest customers, would diminish its business dealings with ICS-Del.; (c) the likelihood that customers of ICS-Del. would purchase their own containers instead of leasing them; (d) serious labor problems facing ICS-

Del. which related to the nature and growth of its business; (e) changes in the method of business of ICS-Del.; (f) increasing competition confronting ICS-Del.; (g) alleged conflicts of interest among the shareholders, directors and officers of ICSI; and (h) the inadequacy of credit sources to conduct ICSI's business.

51. On or about November 1, 1971 Interway paid a dividend of 7,184 shares of convertible preference stock on the 143,673 shares of such stock received by REA pursuant to the June 23, 1969 agreement, which dividend was accepted and retained.

52. On December 16, 1971 a judgment was entered which approved a settlement of the Weinberger and Rosenfield actions, and dismissed with prejudice the consolidated amended complaint therein as to all defendants, including REA. REA made no contribution toward such settlement. The Stipulation and Agreement of Compromise and Settlement, as amended, which was entered into in such actions, was signed by duly authorized counsel on REA's behalf.

53. In the spring of 1972 REA informed Interway that it wished to sell a portion of the Interway convertible preference stock, or common stock into which such stock was convertible, pursuant to the provisions of Rule 144 of the Securities and Exchange Commission. REA asked Interway whether it would extend its cooperation in connection with such proposed sale, and Interway agreed to do so.

54. On May 30, 1972, or over three and a half years after the events in question, and notwithstanding its prior actions

hereinabove alleged, REA saw fit to bestir itself and bring this action against defendants, alleging that material misrepresentations and omissions with respect to the financial condition and prospects of ICSI, which misrepresentations and omissions had been the subject of the Weinberger and Rosenfield actions, had been made in connection with the October 11, 1968 agreements for the sale of Realco. Commencement of this action represented the first time that REA had ever made any complaint to defendants as to any of the matters upon which its claim herein is predicated.

55. After commencement of this action defendants offered to rescind the transactions pursuant to which REA had sold all of the Realco stock, by reconveying such stock to REA in return for REA's refunding to defendants the consideration paid for such stock. REA declined this rescission offer on the ground it was unable to obtain the necessary financing to enable it to perform.

56. By reason of the foregoing, REA is barred from maintaining the claim alleged in Count I of the complaint herein by the doctrines of waiver, estoppel and laches.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE TO COUNT I OF THE COMPLAINT, DEFENDANTS ALLEGE:

57. Defendants repeat and reallege each and every allegation of paragraphs 31 through 37, inclusive, and 40, 45, and 51 of this answer with the same force and effect as if herei set forth in full.

58. The agreement of June 23, 1969 between REA ar ICSI, and the acceptance of benefits thereunder (including receipt of dividends), operated as an accord and satisfa

and settled and put to rest all claims between REA and defendants as to the adequacy of the consideration paid to plaintiff for the stock of Realco.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE TO COUNT I OF THE COMPLAINT, DEFENDANTS ALLEGE:

59. Defendants repeat and reallege each and every allegation of paragraphs 31 through 37, inclusive, of this answer with the same force and effect as if herein set forth in full.

60. REA is barred from maintaining the claim alleged in Count I of the complaint herein by its own failure to exercise reasonable diligence.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE TO COUNT I OF THE COMPLAINT, DEFENDANTS ALLEGE:

61. Defendants repeat and reallege each and every allegation of paragraphs 31 through 37, inclusive, and 55 of this answer with the same force and effect as if herein set forth in full.

62. Subsequent to November 1, 1968 REA agreed to sell, and did sell, the 49% of Realco stock which had not previously been purchased by ICSI for cash, notwithstanding its awareness at all relevant times of the actual market price of the common stock of ICSI and the decline in such price from that prevailing on November 1, 1968. REA was under no contractual obligation to sell to ICSI any of such 49% of Realco stock, as the option was solely that of REA. Having nevertheless voluntarily agreed to sell the stock, with full knowledge of the depressed value of the ICSI securities received in exchange, REA has not been injured by any act of defendants and cannot recover from defendants for the consequences of its own election knowingly made.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE TO COUNTS II AND III OF THE COMPLAINT, DEFENDANTS ALLEGE:

63. On February 25, 1974 REA and Interway entered into an agreement with respect to the purchase by Interway from REA of all of REA's right, title and interest in 165,225 shares of Interway's convertible preference stock for a price of $16.50 per share.

64. The agreement of February 25, 1974 between REA and Interway, and the acceptance by REA of benefits thereunder, operated as an accord and satisfaction, and settled and put to rest all claims between REA and defendants based upon defendants' alleged failure to comply with demands of REA for registration of the stock which was the subject matter of said agreement.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE TO COUNTS II AND III OF THE COMPLAINT, DEFENDANTS ALLEGE:

65. The Court lacks jurisdiction over the subject matter of Counts II and III of the complaint.

AS AND FOR AN AMENDED COUNTERCLAIM AGAINST PLAINTIFF, DEFENDANTS ALLEGE:

66. Defendant Interway Corporation ("Interway") is a Delaware corporation with its principal place of business in New York, New York. Prior to May 1971 it was known as Integrated Container Service Industries Corporation ("ICSI"). Defendant Integrated Container Service, Inc. ("ICSI-Del.") is a Delaware corporation with its principal place of business in New York, New York. It is a wholly-owned subsidiary of Interway.

67. Plaintiff REA Express, Inc. ("REA") is a Delaware corporation with its principal place of business in New York, New York.

68. The Court has ancillary jurisdiction over this counterclaim because the claim asserted herein arises out of the transaction or occurrence that is the subject matter of the claim asserted in Count I of REA's complaint.

69. On October 11, 1968 REA and Integrated Container Service, Inc. ("ICS-Pa."), a Pennsylvania corporation with its principal place of business in New York, New York, entered into agreements relating to the sale by REA to ICS-Pa. of the stock of REA Leasing Corporation ("Realco"), now known as Realco Services Incorporated, which was then a wholly-owned subsidiary of REA. Pursuant to such agreements REA accepted an offer of ICS-Pa. dated September 23, 1968, as amended by a letter dated October 4, 1968. The agreements provided that ICS-Pa. would purchase 51% of the issued and outstanding stock of Realco, and $2,400,000 of subordinated debt of Realco to REA, for $32,400,000. In addition, REA was given an option until July 11, 1969 to sell any or all of the remaining 49% of Realco stock for specified amounts of convertible preference stock of ICSI, a holding company to be formed for the purpose of holding all the outstanding stock of ICS-Pa. and all the stock of Realco to be purchased from REA.

70. The closing on the October 11, 1968 agreements took place on November 1, 1968, and ICSI, which was incorporated on October 16, 1968 and into which ICS-Pa. was merged on October 25,

1968, paid REA $32,400,000 for 51% of the Realco stock and the subordinated debt of Realco to REA. Prior to such merger ICS-Pa. transferred its assets and business (subject to its liabilities) to ICS-Del., which was incorporated on October 10, 1968, in return for all of the capital stock of ICS-Del., which stock was acquired by ICSI following the merger into it of ICS-Pa. As permitted by the October 11, 1968 purchase agreement, ICS-Pa. assigned its rights and obligations under such agreement to ICSI on or about October 19, 1968.

71. In the October 11, 1968 purchase agreement REA represented, warranted and agreed as follows:

> "(c) Seller [REA] has furnished to Buyer a true and correct copy of the audited consolidated balance sheet of Realco and subsidiaries as of June 30, 1968, and the related statement of income and retained earnings for the year then ended, together with the related report of Peat, Marwick, Mitchell & Co., independent public accountants. Said financial statements are true and correct. Except to the extent reflected or reserved against in the consolidated balance sheet as of June 30, 1968, Realco, as of the date thereof, had no liabilities or obligations of a nature customarily reflected in a corporate balance sheet prepared in accordance with generally accepted accounting principles, including, without limitation, any tax liabilities (i) incurred in respect of Realco's income for any period prior to the close of business on June 30, 1968, or (ii) arising out of transactions entered into or any state of facts existing prior thereto. As of June 30, 1968, Realco had no liabilities of any nature contingent or otherwise not fully reflected or reserved against in its consolidated balance sheet as of June 30, 1968.
>
> * * *
>
> (e) Between June 30, 1968 and the Closing Date, Realco has not incurred and will not incur, any extraordinary losses or obligations or liabilities except current liabilities incurred in

the ordinary and usual course of business and Realco has not made and will not make any extraordinary expenditures other than for additions and improvements to existing facilities and equipment. Between June 30, 1968 and the Closing Date, Realco has and will conduct its business, maintain its properties and keep its books and records in the usual manner.

(f) None of the accounts and notes receivable of Realco reflected in the consolidated balance sheet of Realco and subsidiaries as of June 30, 1968, are subject to counterclaims or set-offs and all of such accounts and notes receivable are (to the extent not collected since June 30, 1968) good and collectible at the aggregate recorded amounts thereof, less the amounts of the applicable reserves or allowances reflected in said consolidated balance sheet for doubtful accounts, overcharge, noncollectible items and for allowances and discounts."

72. REA breached said representations, warranties and agreements, and said representations, warranties and agreements were untrue and incorrect, in the following respects:

(a) $254,034 of the accounts and notes receivable of Realco reflected in the June 30, 1968 consolidated balance sheet of Realco were not good and were not collectible. Such amount of $254,034 was $101,149 in excess of the amount of the applicable reserves or allowances reflected in said consolidated balance sheet for doubtful accounts, overcharge, noncollectible items and for allowances and discounts. This shortage of $101,149 in the amount of such applicable reserves or allowances represented an expense of Realco for the year ended June 30, 1968 not reflected in its statement of income for such period.

(b) As of June 30, 1968 Realco had a liability of $49,236 representing amounts owed for trailer repairs, which liability was not reflected or reserved against in the June 30, 1968

consolidated balance sheet of Realco, and represented an expense of Realco for the year ended June 30, 1968 not reflected in its statement of income for such period.

(c) As of June 30, 1968 Realco had a liability (after appropriate adjustments) of $37,508 representing an additional equalization allowance owed to Realco's customers, which liability was not reflected or reserved against in the June 30, 1968 consolidated balance sheet of Realco, and represented an expense of Realco for the year ended June 30, 1968 not reflected in its statement of income for such period.

(d) The June 30, 1968 consolidated balance sheet of Realco reflected the following:

(i) An asset of $11,263 representing inventory listed in Account 1300, Material and Supplies.

(ii) An asset of $20,591 representing equipment listed in Account 1310, Trailer Parts - Buy-Outs.

(iii) An asset of $25,547 representing equipment listed in Account 1410, Trailers-Owned-Other-Remac.

(iv) An asset of $29,055 (after a credit of $1,368) representing equipment listed in Account 1320, Parts-to-be-Assembled.

(v) An asset of $36,876 representing destroyed equipment listed in Account 2111, Trailers Destroyed.

(vi) An asset of $11,775 representing

repair parts inventory of Real Services, Inc., a wholly-owned subsidiary of Realco.

All of such "assets" were fictitious and non-existent as of June 30, 1968 and were improperly included in the June 30, 1968 consolidated balance sheet of Realco. Such "assets" should have been written off against Realco's income for the year ended June 30, 1968, which would have caused a pro tanto reduction in pre-tax income for such period. Such expenses were not in fact reflected in Realco's statement of income for such period.

(e) As of June 30, 1968 Realco had a liability of $43,800 under the Realco pension plan, which liability was not reflected or reserved against in the June 30, 1968 consolidated balance sheet of Realco and should have been charged as an expense of Realco for the year ended June 30, 1968, which expense, however, was not reflected in its statement of income for such period.

73. Had the consolidated statement of income of Realco for the year ended June 30, 1968 been true and correct, it would have shown pre-tax income of $2,809,657, that is, $366,800 less than the amount of $3,176,457 actually shown, and after-tax income of $2,137,689, that is, $278,768 less than the amount of $2,416,457 actually shown (on the basis of application of the average income tax rate for Realco of 24%). Had the June 30, 1968 consolidated balance sheet of Realco been true and correct, it would have shown retained earnings of $278,768 less than the amount actually shown.

74. ICSI paid REA $32,400,000 in cash for 51% of the stock of Realco and certain subordinated debt owed by Realco to

REA. For the remaining 49% of the stock of Realco, REA received in cash a total of $15,337,602, as follows:

(a) REA received net proceeds of $7,897,100 as a result of the sale of 175,102 shares of ICSI common stock (obtained through the conversion of 116,735 shares of ICSI convertible preference stock) pursuant to a public offering of March 6, 1969;

(b) ICSI paid REA $4,714,290 on June 23, 1969 for 20% of the stock of Realco;

(c) Interway (formerly ICSI) paid REA $2,726,212 on February 26, 1974 for 165,225 shares of Interway's convertible preference stock.

Calculated on this basis of cash actually received by REA, ICSI paid a total of $47,737,603 for 100% of the stock of Realco, or 19.8 times Realco's after-tax earnings for the year ended June 30, 1968 of $2,416,457.

75. Had the June 30, 1968 consolidated balance sheet of Realco and consolidated statement of income of Realco for the year ended June 30, 1968 been true and correct, ICSI would have paid REA only $42,326,242 for 100% of the stock of Realco, or $5,411,361 less than what ICSI did pay, as calculated on the basis set forth in paragraph 74 of this counterclaim.

WHEREFORE, defendants demand judgment as follows:

(a) Dismissing the complaint herein, and awarding them their costs and disbursements;

(b) In the amount of $5,411,361 on their counterclaim, together with interest from November 1, 1968.

Dated: New York, New York
May 23, 1974

WINTHROP, STIMSON, PUTNAM & ROBERTS

By Stephen G. Warner

A Member of the Firm
Attorneys for Defendants
40 Wall Street
New York, New York 10005
Tel: (212) 943-0700

J. T.
MAY 24 1974

File No. ..... Year .....

73 Civ. 560 (CLB)
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

REA EXPRESS, INC.,

Plaintiff,

-against-

INTERWAY CORPORATION et al.,

Defendants.

ANSWER TO AMENDED AND SUPPLEMENTAL COMPLAINT, AND AMENDED COUNTERCLAIM OF DEFENDANTS

Winthrop, Stimson, Putnam & Roberts,
Attorneys for Defendants

40 Wall Street,
Borough of Manhattan,
New York, N.Y. 10005

TELEPHONE
943-0700

Due and timely service of the within .....

.....

is hereby admitted this day of
19

Attorney for

Sir:

Please take notice that
of which the within is a copy, was duly entered in the office of the clerk of the

on the *day of* 19

Dated New York City, 19
Yours, &c.

Winthrop, Stimson, Putnam & Roberts

Attorneys for .....
40 Wall Street,
Borough of Manhattan,
New York, N. Y. 10005

To

Attorney for

Second Set of Interrogatories Propounded by Defendants

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

REA EXPRESS, INC., Plaintiff	:	73 Civ. 560 (CLB)
-against-	:	SECOND SET OF INTERROGATORIES PROPOUNDED BY DEFENDANTS
INTERWAY CORPORATION; INTEGRATED CONTAINER SERVICE, INC. Defendants.	:	

5. State whether a document produced by plaintiff, a copy of which is annexed hereto as Exhibit A (the "Document"), was ever sent by plaintiff to the specified addressee. If the Document was not so sent, state why it was not. If the Document was so sent, state when it was sent, and identify all writings received in response thereto.

[Exhibit A is Joint Exhibit 268]

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

REA EXPRESS, INC.,	:	73 Civ. 560 (CLB)
Plaintiff	:	ANSWERS OF PLAINTIFF REA EXPRESS, INC. TO DEFENDANTS' INTER-ROGATORIES (Second Set)
-against-	:	
INTERWAY CORPORATION; INTEGRATED CONTAINER SERVICE, INC.,	:	
Defendants	:	

5. The letter with enclosure from Robert A. Burman, General Attorney for REA Express, Inc., to Deane G. Hope, Corporate Trust Officer, Morgan Guaranty Trust Company of New York, referred to as "the Document" in Defendant's Second Set of Interrogatories and marked Exhibit A attached thereto was sent by plaintiff on or about July 26, 1971 and was received by the addressee. No writings were received by plaintiff in response thereto.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

REA EXPRESS, INC.,	:	
Plaintiff,	:	
v.	:	73 Civ. 560 (CLB)
INTERWAY CORPORATION; INTEGRATED CONTAINER SERVICE, INC.,	:	
Defendants.	:	

STIPULATION OF FACTS

It is hereby stipulated and agreed (for purposes of this action only) by and between plaintiff REA Express, Inc. ("REA") and defendants Interway Corporation ("Interway") and Integrated Container Service, Inc. ("ICS-Del."), through their respective counsel, that the facts set forth below are undisputed and true and that this stipulation may be offered to show such facts without the necessity of offering witnesses or documentary evidence in support thereof. If any part of this stipulation is offered by any party, all or any other parts of this stipulation may be offered at the same time by any other party. This stipulation shall not preclude the right of the plaintiff or defendants to offer witnesses or documentary evidence relating to any stipulated facts, or to present and discuss inferences which might be drawn therefrom. Unless otherwise indicated, all documents referred to herein are the subject of a separate stipulation between the parties.

Throughout this stipulation reference shall be deemed to be made to the contents of all documents described or treated in the text.

Neither party is, by this stipulation, acknowledging the relevance to the issues presented by this litigation of any of the facts set forth herein.

The stipulated facts are as follows:

1. Plaintiff REA is a Delaware corporation which has its principal place of business at 219 East 42nd Street, New York, New York. At all relevant times REA has been an express company. Prior to June 1968 REA was known as Railway Express Company, Incorporated. Prior to November 1, 1968 REA owned all of the outstanding capital stock of Realco Services Incorporated ("Realco") which was then called REA Leasing Corporation. Interway has since acquired 100% of Realco as set forth below. At all relevant times Realco has been in the business of leasing trailers primarily to railroads for the railroads' trailer-on-flat-car service commonly known as piggybacking. REA is not a publicly held corporation.

2. Defendant Interway is a Delaware corporation which has its principal place of business at 522 Fifth Avenue, New York, New York. It is a holding company which owns all of the stock of ICS-Del., Realco and certain other subsidiaries and which conducts no business of its own. Prior to May 1971, Interway was called Integrated Container Service Industries Corporation ("ICSI"). As used herein "Interway" refers to the holding company both during and after the time it was known as ICSI.

3. Defendant ICS-Del. is a Delaware corporation which has its principal place of business at 522 Fifth Avenue, New York, New York. Integrated Container Service, Inc., a Pennsylvania corporation incorporated in 1962 ("ICS-Pa."), transferred its

assets and business (subject to its liabilities) to ICS-Del. in October 1968 in return for all of the capital stock of ICS-Del. ICS-Pa. was merged into Interway in October 1968, and in conjunction therewith shareholders of ICS-Pa. exchanged their shares for Interway shares. As used herein "ICS" refers to ICS-Del. or ICS-Pa., whichever conducted business during the time in question. ICS has at all relevant times been in the business of leasing to others cargo containers and accessory equipment used primarily by ocean carriers for the transportation of freight.

4. ICS was formed in 1962 by Sol Katz and Michael C. Kluge. Katz was at all relevant times president of Strick Corporation, a manufacturer of containers and trailers and a major supplier of ICS. ICS made its first public offering pursuant to a registration statement dated May 16, 1968 (Jt. Ex. 22)* Subsequent thereto and until it became a wholly-owned subsidiary of Interway, ICS's common stock was traded on the over-the-counter market.

5. Price Waterhouse & Co. ("Price Waterhouse") has acted as outside auditors for ICS and Interway at all relevant times and for Realco since November 1, 1968.

6. Peat, Marwick, Mitchell & Co. ("Peat, Marwick") acted as outside auditors for REA and Realco up to and including the audit of the financial statements of such companies for the fiscal year ended June 30, 1968.

7. By unanimous action of REA's board of directors on July 18, 1967, REA's management was directed to seek proposals

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* "Jt. Ex. " refers to the Joint Exhibits listed on Schedule A of the Stipulation relating to documentary evidence which the parties have executed herein.

for the immediate purchase of REA. In order to solicit proposals for such purchase, REA prepared a brochure dated August 30, 1967, entitled "Railway Express Agency, Incorporated" (Jt. Ex. 6). The efforts to sell REA were not successful.

8. REA continued to give consideration to the possibility of selling REA and/or Realco during the second half of 1967 and the first half of 1968 and received advice in connection therewith from the investment banking firm of Kuhn, Loeb & Co. ("Kuhn, Loeb"), and from Peat, Marwick and the law firm of Cravath, Swaine & Moore ("Cravath"). During such period REA had a continuing and increasing need for cash in the face of mounting operating losses.

9. In early June 1968 REA retained the management consulting firm of McKinsey & Company, Inc. ("McKinsey") to advise REA in connection with the management of its affairs.

10. During May and June 1968 representatives of REA reviewed REA's financial condition with representatives of McKinsey, and the conclusion was reached that REA needed cash.

11. By resolution of the REA board of directors adopted at a meeting on July 1, 1968 (Jt. Ex. 38) the board approved the written recommendation of McKinsey as set forth in Jt. Ex. 31. In accordance with this decision REA requested its financial adviser, Kuhn, Loeb, to advise it in connection with its effort to sell all or part of the stock of Realco at the highest possible price.

12. During the period June through August, 1968 REA, both directly and through Kuhn, Loeb, received communications from a number of potential corporate purchasers expressing their possible interest in acquiring all or part of the stock of Realco.

13. In accordance with the advice of Kuhn, Loeb and McKinsey, REA, by letter dated August 16, 1968 (Jt. Ex. 59) which was mailed to 47 potential bidders including ICS (Jt. Ex. 58), solicited bids for the purchase of Realco in accordance with the terms and conditions set forth therein. This solicitation was ratified by resolution of the REA board of directors at a meeting held on August 23, 1968 (Jt. Ex. 62).

14. Prior to August 16, 1968 and the formal solicitation of bids, Wayne Hoffman, Kluge and Sidney Kahn, among others, had met with representatives of REA to discuss on behalf of ICS the possible purchase by ICS of Realco.

15. In response to REA's solicitation of bids ICS addressed a letter dated September 23, 1968 to REA (Jt. Ex. 78). Along with such letter ICS transmitted to REA copies of its May 16, 1968 prospectus (Jt. Ex. 22) and its interim report to shareholders for the six months ended June 30, 1968 (Jt. Ex. 34).

16. In addition to the ICS offer REA received offers from three other bidders. General American Transportation Corporation ("GATX") submitted a bid by letter to REA dated September 23, 1968 (Jt. Ex. 84). Pepsico, Inc. ("Pepsico") submitted a bid by letter dated September 24, 1968 (Jt. Ex. 87), and Leasco Data Processing Equipment Corp. ("Leasco") submitted a bid by letter dated September 25, 1968 (Jt. Ex. 88). Each bidder,

including ICS, submitted two or more alternative offers. Each offer, including that of ICS, provided for the payment at a closing not later than November 1, 1968 of at least the required minimum of $30,000,000 in cash specified in REA's invitation for bids.

17. At REA's request Kuhn, Loeb made an evaluation of each of the offers submitted by the bidders (Jt. Ex. 91, 98), and advised REA that the value of such offers was as follows:

Offer	Value of Offer	Value of Offer on Per Share Basis	Portion of REA Stock to Which Offer Applies
Pepsico Offer No. 1	$41,776,800	$8,355	100%
Pepsico Offer No. 2	38,284,000	7,657	100%
Leasco Offer No. 1	38,000,000	7,600	100%
Leasco Offer No. 2	38,150,000	7,630	100%
GATX Offer No. 1	32,600,000	6,520	85-100%
GATX Offer Nos. 2 and 3	32,600,000	6,520	100%
ICS Offer No. 1	30,000,000	11,765	51%
ICS Offer No. 2	59,600,000 to 64,400,000	11,920 to 12,880	51-100% (values based on 100%)

18. By letter dated October 4, 1968 from Kluge to Ray H. Jordan of REA (Jt. Ex. 101) and after discussions and

negotiations between representatives of REA and ICS, ICS clarified and modified the terms of its September 23, 1968 offer as set forth in such letter.

19. By letter dated October 11, 1968 (Jt. Ex. 106) Kuhn, Loeb advised the board of directors of REA that in its opinion the most advantageous offer REA had received for the purchase of all or part of the Realco stock was that of ICS as detailed in an October 11, 1968 draft purchase agreement between ICS and REA and an October 11, 1968 draft letter from REA to ICS, and recommended that REA accept it.

20. By letter dated October 11, 1968 (Jt. Ex. 108) from McKinsey to the board of directors of REA, McKinsey recommended that REA accept the ICS offer.

21. Pursuant to a purchase agreement dated October 11, 1968 (Jt. Ex. 107) and a letter dated October 11, 1968 from Jordan to Kluge (Jt. Ex. 109), REA and ICS entered into formal agreements with respect to the sale of, or option to sell, the stock of Realco. Among other things the agreements provided that 51% of the stock of Realco would be sold to ICS for $30,000,000 and that $2,400,000 of 5 1/2% subordinated debt of Realco to REA would be sold to ICS for $2,400,000 plus accrued interest from October 1, 1968. In addition, REA was given an option until July 11, 1969 to sell any or all of the remaining 49% of the Realco stock for a total of 440,000 shares (or a proportionate amount thereof) of preference stock of Interway, which was convertible into Interway common stock on the basis of 1.5 shares of common stock for each share of preference stock. A closing took place on

November 1, 1968, at which ICS purchased 51% of the stock of Realco and certain subordinated debt owed by Realco to REA in accordance with the terms of the October 11, 1968 purchase agreement (Jt. Ex. 107).

22. Prior to the closing ICS obtained a commitment for a $20 million loan from Continental Illinois National Bank in Chicago, Illinois, which funds were to be used to help finance the purchase of Realco.

23. Realco was required to obtain consent for the sale of Realco from certain of its creditors and customers located in various states.

24. As contemplated by the transaction, ICS-Del. was incorporated on October 10, 1968, and ICS-Pa. was merged into Interway, a holding company incorporated on October 16, 1968 for the purpose of holding ICS-Del. and Realco stock, on October 25, 1968. Interway's common stock was traded on the over-the-counter market from the date of its incorporation until August 8, 1973, when it commenced trading on the American Stock Exchange.

25. Interpool Inc. ("Interpool") was incorporated on or about November 20, 1967 as a wholly-owned subsidiary of REA.

26. On or about November 1, 1968 REA caused all of the capital stock of Interpool to be transferred to Steadman Leasing, Inc., a subsidiary of Steadman Industries, Ltd. of Toronto, Canada. This action was taken to satisfy the covenant of REA contained in paragraph 7(a) of the purchase agreement dated October 11, 1968 (Jt. Ex. 107).

27. Spencer D. Moseley was named president of REA and became a member of its board of directors on October 1, 1968.

28. On December 31, 1968 Interway filed a registration statement, including a preliminary prospectus (Jt. Ex. 148), for a public offering of shares of common stock of Interway. By letter dated January 15, 1969 (Jt. Ex. 151) REA elected to exercise its option with respect to 13% of the Realco stock (650 shares) still held by it, such exercise to be contingent on, and to become effective at the time of, effectiveness of an underwriting agreement entered into among Lehman Brothers, Kuhn, Loeb, Interway, REA, Kluge and Peer Pedersen for the public offering. REA requested Interway to use its best efforts (a) to register under the Securities Act of 1933 the 175,102 shares of common stock to be received by REA on conversion of the 116,735 shares of convertible preference stock which would be obtained by such exercise of the option, and (b) to include such 175,102 shares in a proposed underwritten public offering of shares of common stock of Interway, of which Interway had informed REA. In accordance with REA's request, such 175,102 shares of common stock were sold in a public offering on March 6, 1969 pursuant to an Interway registration statement and prospectus of the same date (Jt. Ex. 161) at a price to the public of $48 a share, REA receiving after underwriting discounts and commissions a total of $7,897,100 for such shares, or $45.10 a share. REA also paid Interway $31,784 representing its pro rata share of the expenses of the public offering.

29. In early 1969 Interway reported to its shareholders (Jt. Ex. 144) that it had consolidated net income of $1,998,955 for the year ended December 31, 1968.

30. By its interim report to shareholders for the three months ended March 31, 1969 (Jt. Ex. 171), and by the issuance of a press release dated May 9, 1969 (Jt. Ex. 176) Interway announced that its net income for the first three months of 1969 was $228,000, or 11¢ per share of common stock, as compared with $419,000, or 21¢ per share of common stock, for the first three months of 1968.

31. On May 27, 1969 an action was commenced in the United States District Court for the Southern District of New York entitled William B. Weinberger v. Integrated Container Service Industries Corporation, et al. (69 Civ. 2284) (the "Weinberger action"). REA was named as one of the defendants in this action and was served with process on or about May 29, 1969. REA authorized the law firm of Simpson Thacher & Bartlett, which firm was retained by Interway on REA's behalf, to represent it in this action. The action, which was brought under the provisions of the Securities Act of 1933 and the Securities Exchange Act of 1934, and the Rules and Regulations issued thereunder, alleged that the registration statement and prospectus of Interway dated March 6, 1969, pursuant to which a public offering had been made of 550,102 shares of common stock of Interway, including 175,202 shares sold for the account of REA, contained untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading. REA received the complaint in the Weinberger action (Jt. Ex. 179) on or about May 29, 1969, and it was reviewed by Harry Riordan of Cravath, John E. Robson of the law firm of Leibman, Williams, Bennett, Baird & Minow and by Arthur M. Wisehart (Vice President and General Counsel of REA), Moseley (President of REA) and Robert G. Fuller (a trustee and director of REA).

32. By letter dated June 10, 1969 (Jt. Ex. 184) REA informed Interway that it elected to exercise the option which it held under the agreement of October 11, 1968 by transferring to Interway an additional 750 shares, or 15%, of the stock of Realco in exchange for 134,694 shares of Interway convertible preference stock. REA also requested Interway to use its best efforts to register under the Securities Act of 1933 the 202,041 shares of common stock of Interway to be received by REA on conversion of such 134,694 shares of convertible preference stock.

33. On June 13, 1969 Interway informed REA (Jt. Ex. 188) that it would use its best efforts to register under the Securities Act of 1933 the 202,401 shares of common stock referred to in the preceding paragraph hereof, but at or about the same time suggested that such registration was then undesirable for both Interway and REA.

34. On June 23, 1969, after negotiations, REA and Interway entered into an agreement (Jt. Ex. 195) pursuant to which Interway would acquire the remaining 1,800 shares, or 36%, of Realco stock which was still owned by REA, including the 750 shares referred to in REA's letter of June 10, 1969. Such agreement provided that Interway would pay REA $4,714,290 for 1,000 shares of Realco stock, which was equivalent to $17.50 for each share of common stock obtainable upon conversion of the Interway preferred stock which REA would have received by exercising the option in accordance with its terms. Such agreement further provided that the balance of 800 shares of Realco stock would be transferred to Interway in exchange for 143,673 shares of Interway convertible preference stock, in accordance with the option granted REA by the October 11, 1968 agreement. Pursuant to the agreement

Interway acquired the 1,800 shares of Realco stock for the consideration specified.

35. REA's tax return for the fiscal year ended June 30, 1969, shows an assigned value for federal income tax purposes of $3,771,428 for the 143,673 shares of Interway convertible preferred stock received by it on or about June 23, 1969. Since the preferred stock was convertible into 1-1/2 shares of common stock, the value thus assigned would be the equivalent of $17.50 for each share of underlying common stock.

36. On or about July 18, 1969 REA, through its counsel, served and filed its answer in the Weinberger action (Jt. Ex. 206). REA received from its counsel its answer to the Weinberger action on or about July 18, 1969, and it was reviewed by Moseley and Wisehart.

37. In August of 1969 Interway reported to its shareholders, including REA, that its consolidated net income for the first six months of 1969 was $937,000, or 43¢ per share of common stock, as compared with $998,000, or 50¢ per share of common stock, for the comparable period of 1968 (Jt. Ex. 202).

38. On or about November 1, 1969 Interway paid a dividend of 7,184 shares of convertible preference stock on the 143,673 shares of such stock theretofore received by REA, which dividend was accepted and retained.

39. In November of 1969 Interway reported to its shareholders, including REA, that its consolidated net income for the first nine months of 1969 was $1,571,000, or 68¢ per share of

common stock, as compared with $1,613,000, or 81¢ per share of common stock, for the comparable period of 1968 (Jt. Ex. 210).

40. On or about December 31, 1969 an action was commenced in the United States District Court for the Northern District of Illinois entitled Maurice Rosenfield, et al. v. Integrated Container Service Industries Corporation, et al. (69 C 2694) (the "Rosenfield action"). REA was named as one of the defendants in this action and was served with process in January 1970. REA authorized Simpson Thacher & Bartlett, which firm was retained by Interway on REA's behalf, to represent it in the action. REA received a copy of the complaint (Jt. Ex. 218), which was reviewed by Simpson Thacher & Bartlett, and by Wisehart and Robert A. Burman (Assistant Secretary of REA) on or about January 7, 1970. The action, which was brought under the provisions of Sections 11, 12(2) and 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934, and Rule 10b-5 adopted by the Securities and Exchange Commission, alleged that the registration statement and prospectus of Interway dated March 6, 1969 contained untrue statements of material facts and omitted to state material facts.

41. In early 1970 Interway reported to its shareholders, including REA, that it had a consolidated net income of $1,793,000, or 75¢ per share of common stock, in 1969, as compared with $1,999,000, or $1.00 per share of common stock, in 1968 (Jt. Ex. 220).

42. On or about May 7, 1970 REA, through its counsel, served and filed its answer in the Rosenfield action (Jt. Ex. 224)

which had theretofore been transferred to the United States District Court for the Southern District of New York pursuant to 28 U.S.C. § 1404(a), and docketed as 70 Civ. 998.

43. On or about November 1, 1970 Interway paid a dividend of 7,184 shares of convertible preference stock on the 143,673 shares of such stock theretofore received by REA, which dividend was accepted and retained.

44. During 1970 ICS wrote off $1,917,500 of obsolete equipment which consisted primarily of Stricktainers, SABs and frames. Only a few Stricktainers were purchased by ICS after 1966. Stricktainers did not conform to the specifications for containers which were promulgated by the International Standards Organization in 1968.

45. In early 1971 Interway reported to its shareholders, including REA, that it had a consolidated net loss of $306,700 for 1970 after extraordinary charges, net of deferred income taxes, of $1,917,500 (Jt. Ex. 230).

46. On or about February 18, 1971 a consolidated amended complaint (Jt. Ex. 231) was served on counsel for REA in the Weinberger and Rosenfield actions, which had been consolidated pursuant to court order (the "Weinberger consolidated action"). REA received a copy of this complaint on or about April 9, 1971 and it was reviewed by Simpson Thacher & Bartlett, the law firm of Anderson & Allegaert and by Wisehart and Burman. On or about July 28, 1970 plaintiffs in the Rosenfield action had served counsel for REA with a motion (Jt. Ex. 228) seeking leave to serve and file an amended complaint which was substantially similar to the consolidated amended complaint referred to above.

47. By letter dated June 14, 1971 (Jt. Ex. 233) REA requested Interway to register under the Securities Act of 1933 the common stock which it would receive upon conversion of the 158,041 shares of convertible preference stock which REA stated it held. As of June 14, 1971 these 158,041 shares were registered in the name of Kugler & Co. or Carr & Co.

48. On or about September 17, 1971 REA, through its counsel, served and filed its answer in the Weinberger consolidated action (Jt. Ex. 245). Such answer was reviewed by Simpson Thacher & Bartlett and by Wisehart and Burman.

49. On or about September 24, 1971 plaintiffs and defendants in the Weinberger consolidated action, including REA, entered into a Stipulation and Agreement of Compromise and Settlement through their respective counsel pursuant to which such action was proposed to be settled (Jt. Ex. 247). REA received such Stipulation on or about September 15, 1971, and it was reviewed by Simpson Thacher & Bartlett and by Wisehart and Burman. Such stipulation was signed by duly authorized counsel on REA's behalf.

50. On or about November 1, 1971 Interway paid a dividend of 7,184 shares of convertible preference stock on the 143,673 shares of such stock theretofore received by REA, which dividend was accepted and retained.

51. On December 16, 1971 a judgment was entered which approved a settlement of the Weinberger consolidated action, and dismissed with prejudice the consolidated amended complaint there-

in as to all defendants, including REA (Jt. Ex. 253). The Court had given oral approval of the settlement at a hearing held on December 8, 1971. REA made no contribution toward such settlement. REA received a copy of such judgment on or about January 5, 1972, and it was reviewed by Simpson Thacher & Bartlett and by Wisehart and Burman.

52. On May 30, 1972, REA brought this action against defendants.

53. On February 26, 1974 REA sold to Interway 165,225 shares of Interway's convertible preference stock for a total consideration of $2,726,212.50, which was equal to $11 a share for each share of common stock into which the preference stock was convertible (Jt. Ex. 261, 262). No stock transfer taxes were paid by REA in connection with the sale. REA paid $25,000 to a third party for services rendered in arranging the sale.

54. REA was aware at all relevant times of the published bid and asked prices of ICS and of Interway common stock. A schedule of the bid and asked prices for such stock in the over-the-counter market for the specified dates is annexed hereto as Exhibit A.

55. During the period from June 1971 to February 1974 interest costs to REA averaged at least 10% per annum, and REA was in a difficult cash position.

56. A reasonable estimate as to the amount of time it would have taken Interway, following receipt of REA's letter of June 14, 1971 (Jt. Ex. 233), to prepare and file with the Securi-

ties and Exchange Commission ("S.E.C.") a registration statement with respect to the shares referred to in said letter is eight weeks. A reasonable estimate as to the amount of time it would have taken from the filing date before the S.E.C. would have permitted such a registration statement to become effective is eight weeks.

57. The signing of the deposition of Spencer D. Moseley is waived. A copy of such deposition may be used with the same force and effect as the original.

58. The depositions of John S. Guest, Marvin Bower, Michael C. Kluge, Richard T. Norton, Richard E. Luhmann and Sol Katz, which were taken as witnesses during the discovery proceedings conducted herein, may be used by any party at the trial of this action with the same force and effect as if the condition for such use set forth in Fed. R. Civ. P. 32(a)(3)(B) was satisfied with respect to such witness.

Dated: New York, New York
November 24, 1974

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BOSTON
LOS ANGELES

AUGUST 20, 1974

A REPORT

QUOTATIONS _ FROM THE NATIONAL DAILY QUOTATION SERVICE - EASTERN SECTION

ISSUE _ INTERWAY CORPORATION (DELAWARE) COMMON STOCK
(formerly - Integrated Container Services Corp.)

1968	BID PRICES HIGH	BID PRICES LOW	ASKED PRICES HIGH	ASKED PRICES LOW
SEPT. I - SUNDAY				
2 = STOCK EXCHANGES CLOSED				
3	49	48	51	50
4	50	48	51 I/2	50
5	50	48	52	50
6	52	51 I/2	54	53 I/2
9	51 I/2	51	53 I/2	53
I0	52 I/2	52 I/2	54 I/2	54 I/2
II = STOCK EXCHANGES CLOSED				
I2	52	51 I/2	54	53
I3	52 I/2	52	54	53 I/2
I6	53	52	55	53
I7	53	53	55	54
I8 = STOCK EXCHANGES CLOSED				
I9	53	52 I/2	55	54 I/2
20	59	48	61	60
23	58	57	60	59

EXHIBIT A

1968	BID PRICES HIGH	BID PRICES LOW	ASKED PRICES HIGH	ASKED PRICES LOW
SEPT. 24	56	55 I/2	57 I/2	57
25 = STOCK EXCHANGES CLOSED				
26	56	55 I/2	58	57 I/2
27	58	57 I/2	59 I/2	59
30	63	6I	67	63
OCT. I	63 I/2	63	66	65
2 = STOCK EXCHANGES CLOSED				
3	68	64	70	67
4	68	64	70	68
7	65	64	70	67
8	67	66	69	69
9 = STOCK EXCHANGES CLOSED				
I0	65	64	68	67
II	65	64	68	67
I4	70	64	80	67
I5	69	68	72	7I
I6 = STOCK EXCHANGES CLOSED				
I7	69	68	72	70
I8	64	64	67	67
2I	64	63	67	66
22	66	65	68	68
23 = STOCK EXCHANGES CLOSED				
24	66	65	69	68
25	64	64	67	66
28	64	63	67	66
29	64	63	67	66
30 = STOCK EXCHANGES CLOSED				
3I	64	63	67	65

(3)

1968	BID PRICES HIGH	BID PRICES LOW	ASKED PRICES HIGH	ASKED PRICES LOW
NOV. I	64	63	67	66
4	64	62	65 I/2	65
5 = STOCK EXCHANGES CLOSED				
6	63	6I	65	64
7	60	59	63	6I
8	56	55	60	58
II = STOCK EXCHANGES CLOSED				
I2	57	56	60	58
I3	62	6I	65	64
I4	64	64	67	66
I5	65	64	67	67
I8	64	64	67	67
I9	68	68	70	70
20 = STOCK EXCHANGES CLOSED				
2I	68	67	70	70
22	70	69	72	72
25	70	69	72	7I
26	69	69	7I	7I
27	70	69 I/2	7I I/2	7I
28 = STOCK EXCHANGES CLOSED				
29	69 I/2	69	7I	7I
DEC. 2	70	69 I/2	72	7I
3	70 I/2	69 I/2	72	7I
4 = STOCK EXCHANGES CLOSED				
5	69 I/2	69	7I	7I
6	69	68	7I	69 I/2
9	67 I/2	67	69	69
I0	68	67	70	69

(4)

		BID PRICES HIGH	BID PRICES LOW	ASKED PRICES HIGH	ASKED PRICES LOW
1968					
DEC.	II = STOCK EXCHANGES CLOSED				
	I2	67 I/2	67	69 I/2	69
	I3	67	66 I/2	69	68 I/2
	I6	66	65	68	67
	I7	65 I/2	65	67 I/2	67
	I8 = STOCK EXCHANGES CLOSED				
	I9	63	62	64 I/2	64
	20	6I	6I	63	63
	23	6I	60	63	62
	24	58	57	60	60
	25 - STOCK EXCHANGES CLOSED				
	26	58 I/2	57	60 I/2	60
	27	58 I/2	58 I/2	6I	60 I/2
	30	59	59	6I	60
	3I	57 I/2	56 I/2	59 I/2	58 I/2
1969					
JAN.	I = STOCK EXCHANGES CLOSED				
	2	55	54	57	56
	3	55 I/2	55	57 I/2	57
	6	58	56 I/2	60	58 I/2
	7	60	58 I/2	62	60 I/2
	8	59	57	6I	59
	9	57	55	59	57
	I0	57	56	59	58
	I3	56	54 I/2	58	56 I/2
	I4	56	55	58	56 I/2

(5)

1969		BID PRICES HIGH	BID PRICES LOW	ASKED PRICES HIGH	ASKED PRICES LOW
JAN.	I5	54	54	56	56
	I6	55	54 I/2	57	56
	I7	57	56 I/2	59	58
	20	56 I/2	56	58	58
	2I	- NOT AVAILABLE			
	22	58 I/2	58	60 I/2	60
	23	64	62	65	65
	24	66	64	70	68
	27	66	64	70	68
	28	65	64	69	68
	29	65	63	68	67
	30	- NOT AVAILABLE			
	3I	66	62	70	66
FEB.	3	67	62	69	68
	4	66	63	69	68
	5	66	64	69	68
	6	64	63	68	67
	7	66	60	69	64
	I0	= STOCK EXCHANGES CLOSED			
	II	62	6I	66	64
	I2	63	6I	67	64
	I3	63	6I	67	65
	I4	60	59	64	63
	I7	65	65	70	69
	I8	64	6I	68	65
	I9	62	59	66	63
	20	60	60	64	64
	2I	= STOCK EXCHANGES CLOSED			

(6)

1969	BID PRICES HIGH	BID PRICES LOW	ASKED PRICES HIGH	ASKED PRICES LOW
FEB. 24	60	60	64	63
25	60	59	64	63
26	59	57	63	60
27	58	57	6I	60
28	55	53	57	56
MARCH 3	54	54	57	57
4	53	49	56	52
5	49	48	53	5I
6	5I	47	55	48 I/2
7	48	46 I/2	49	48
I0	48	46	48 I/2	48
II	48	46 I/2	49	48
I2	48	46	48 I/2	48
I3	48	47	49	48
I4	47	46 I/2	49	48
I7	46 I/2	45 I/2	48 I/2	47 I/2
I8	45 I/2	44	46 I/2	46
I9	46 I/2	45 I/2	48 I/2	46 I/2
20	46 I/2	46	47 I/2	46 3/4
2I	46 I/2	46	47 I/2	47
24	47 I/2	46 I/2	48 I/2	47 I/2
25	48	48	49	48 3/4
26	48 I/2	48	50	49
27	49 3/4	49 I/2	50 3/4	50
28	50 I/2	50	5I I/2	5I

3I = STOCK EXCHANGES CLOSED

(7)

1969	BID PRICES HIGH	BID PRICES LOW	ASKED PRICES HIGH	ASKED PRICES LOW
APRIL I	52 I/2	5I 3/4	54	52 3/4
2	5I I/2	50 3/4	52 I/2	5I 3/4
3	50 I/2	50	5I I/2	5I
4 = STOCK EXCHANGES CLOSED				
7	5I	50	52	5I
8	5I I/2	50 3/4	52 I/2	5I 3/4
9	5I I/2	5I	52 I/2	52
I0	5I	50 I/2	52	5I I/2
II	49 3/4	49	50 3/4	50
I4	48 I/2	48	49 I/2	49
I5	48 I/2	48	49 I/2	49
I6	47 I/4	46 3/4	48 I/4	47 3/4
I7	46	45 I/2	47	46 I/2
I8	45 I/2	45	46 I/2	46
2I	45 I/4	43 I/2	46 I/4	44 I/2
22	39	35	4I	37
23	38	35	40	38
24	37	34	39	36
25	32 I/2	32	34 I/2	34
28	33	3I I/2	35	33 I/2
29	36 I/2	34 I/2	38	36 I/2
30	38 I/2	37 I/2	40	39
MAY I	38 I/2	38 I/2	4I I/2	40
2	38	34	40	36
5	40	38	4I	39 I/2
6	39	38	40 I/2	39 I/2
7	37	36 I/2	39	38 I/2

(8)

1969	BID PRICES HIGH	BID PRICES LOW	ASKED PRICES HIGH	ASKED PRICES LOW
MAY 8	37	36 I/2	39	38 I/2
9	37 I/4	36	38 I/4	38
I2	37	36	39	37 I/2
I3	37	35 I/2	39	37 I/2
I4	36	35	38	36 I/2
I5	36	35	37 I/2	36 I/2
I6	35 I/2	34	37	36
I9	36	35	37	36 I/2
20	34 I/2	33	36	35
2I	33 I/2	32	35 I/2	34
22	34	33	35	34
23	33 I/2	32 I/2	34 I/2	34
26	33	32 I/2	34 I/2	33 I/2
27	32 I/4	3I	33 I/4	32
28	29 3/4	27	30 3/4	28
29	27 I/2	24 I/2	28 I/2	26 I/2
30 = STOCK EXCHANGES CLOSED				
JUNE 2	24	2I I/2	26	23 I/2
3	22 I/2	2I	24	23
4	24 I/2	23	26	25
5	24 I/2	24	26	25 I/2
6	26 I/2	25 I/2	28	27 I/2
9	26 I/2	25 I/2	28	26 I/2
I0	25 I/2	23 I/2	27	24 I/2
II	24 I/2	23 I/2	26	25
I2	24	23	25 I/2	25
I3	23	2I	25	23

(9)

1969	BID PRICES HIGH	BID PRICES LOW	ASKED PRICES HIGH	ASKED PRICES LOW
JUNE 16	22 1/2	21	24	23
17	22	21	23 1/2	22 1/2
18	21 1/2	21	23 1/2	22 1/2
19	21 1/2	20 1/2	23	21 1/2
20	19	18	21	19 1/2
23	19	17 1/2	21	19
24	18	16 1/2	20	17 1/2
25	18 1/2	17 1/2	20	18 1/2
26	19 1/2	18	21	20
27	20	19	22	20 1/2
30	20 3/4	20	22	21
1971				
JUNE 1	14 7/8	14	15 1/8	14 3/8
2	14 5/8	14	15	14 3/8
3	14 1/2	14 1/8	14 7/8	14 1/2
4	14 1/4	14	14 5/8	14 3/8
7	14 1/4	14	14 5/8	14 3/8
8	14 3/8	14 1/8	14 3/4	14 1/2
9	14 3/8	14 1/8	15	14 1/2
10	14 3/8	14 1/8	14 3/4	14 1/2
11	14 1/2	14 1/8	15	14 1/2
14	14 5/8	14 1/4	15	14 5/8
15	14 1/2	14 1/8	14 7/8	14 1/2
16	14 3/8	13 3/4	14 7/8	14
17	13 7/8	13 5/8	14 1/4	14
18	13 5/8	12 1/2	14	13

(I0)

1971	BID PRICES HIGH	BID PRICES LOW	ASKED PRICES HIGH	ASKED PRICES LOW
JUNE 21	I2 5/8	I2	I3	I2 3/8
22	II 7/8	II I/4	I2 I/4	II 3/4
23	II I/2	II I/8	I2	II 5/8
24	II 3/8	II	II 7/8	II I/2
25	II 3/8	II	II 7/8	II I/2
28	II I/8	I0 7/8	II 5/8	II I/4
29	II	I0	II 3/8	II
30	II 1/4	I0 7/8	II 5/8	II I/4
JULY I	II I/4	II I/8	II 3/4	II I/2
2	I2 3/8	II I/4	I2 3/4	II 5/8
5 - STOCK EXCHANGES CLOSED				
6	I2 3/8	I2 I/4	I2 3/4	I2 5/8
7	I3 5/8	I2 3/8	I4	I2 7/8
8	I3 I/2	I2 3/4	I4	I3 I/8
9	I3 I/4	I2 7/8	I3 5/8	I3 I/4
I2	I3 I/4	I3 I/8	I3 5/8	I3 I/2
I3	I3 I/8	I2 7/8	I3 5/8	I3 I/4
I4	I3	I2 I/4	I3 3/8	I2 5/8
I5	I2 3/4	I2 I/8	I3 I/8	I2 I/2
I6	I2	II 5/8	I2 3/4	I2
I9	II I/2	II I/4	II 7/8	II 5/8
20	II I/4	II I/8	II 3/4	II I/2
21	II 3/8	II I/8	II 3/4	II I/2
22	II 3/8	II I/4	II 3/4	II 5/8
23	II 3/8	II I/8	II 3/4	II I/2
26	II I/4	II	II 5/8	II I/2
27	II I/4	II	II I/2	II I/4

(II)

1971	BID PRICES HIGH	BID PRICES LOW	ASKED PRICES HIGH	ASKED PRICES LOW
JULY 28	10 5/8	10 3/8	11	10 7/8
29	10 3/8	10 1/8	10 3/4	10 1/2
30	10	9 3/4	10 3/8	10 1/8
AUGUST 2	10	9 5/8	10 1/4	10
3	9 3/4	9 5/8	10 1/4	10
4	9 1/8	8 3/4	9 1/2	9 1/4
5	8 3/4	8 1/2	9 1/4	9
6	9 5/8	8 5/8	10	9
9	9 5/8	9 1/2	10	9 7/8
10	9 5/8	9 1/8	10	9 5/8
11	9 5/8	9 1/8	10	9 1/2
12	10 1/8	9 5/8	10 1/2	10
13	10	9 3/4	10 1/2	10 1/4
16	11	9 7/8	11 1/2	10 1/4
17	10 5/8	10 1/4	11	10 3/4
18	10 3/8	10 1/8	10 3/4	10 1/2
19	10 5/8	10 3/8	11 1/8	10 3/4
20	10 1/2	10 3/8	11	10 3/4
23	10 3/8	10 1/8	10 7/8	10 5/8
24	10 1/4	10 1/8	10 5/8	10 1/2
25	10 1/8	10	10 5/8	10 1/2
26	10 3/8	10 1/8	10 7/8	10 5/8
27	10 3/4	10 1/2	11 1/4	10 7/8
30	11	10 5/8	11 3/8	11
31	11 5/8	11 1/4	12 1/8	11 5/8
SEPT. 1	12	11 7/8	12 1/2	12 1/4
2	11 7/8	11 3/4	12 3/8	12 1/8

(I2)

1971		BID PRICES HIGH	BID PRICES LOW	ASKED PRICES HIGH	ASKED PRICES LOW
SEPT.	3	II 7/8	II 5/8	I2 I/4	I2
	6	- STOCK EXCHANGES CLOSED			
	7	I2 7/8	I2	I4	I2 3/4
	8	I3	I2 7/8	I3 5/8	I3 I/8
	9	I3 I/8	I2 7/8	I3 1/2	I3 3/8
	I0	I3 I/8	I3	I3 5/8	I3 3/8
	I3	I3 I/8	I3	I3 I/2	I3 3/8
	I4	I3 I/8	I2 7/8	I3 I/2	I3 I/4
	I5	I3 I/8	I2 7/8	I3 I/2	I3 I/4
	I6	I3 I/8	I2 7/8	I3 I/2	I3 I/4
	I7	I3 3/8	I3	I3 3/4	I3 I/2
	20	I2 5/8	I2 3/8	I3	I2 7/8
	2I	I2 I/2	I2 I/4	I2 7/8	I2 5/8
	22	I2 I/8	I2	I2 5/8	I2 3/8
	23	II 7/8	II 3/4	I2 3/8	I2 I/8
	24	II 7/8	II 5/8	I2 I/4	I2
	27	II 7/8	II I/2	I2 3/8	I2
	28	II 5/8	II 3/8	I2	II 7/8
	29	II I/4	II I/8	II 5/8	II 3/8
	30	II I/8	II	I2	II 3/8
OCT.	I	I0 5/8	I0 I/8	II	I0 5/8
	4	I0 I/2	I0 I/4	I0 7/8	I0 5/8
	5	I0 I/2	I0 3/8	II	I0 3/4
	6	I0 3/8	I0 I/4	I0 3/4	I0 3/4
	7	I0 3/4	I0 I/4	II I/4	I0 5/8
	8	I0 7/8	I0 5/8	II I/4	II

(I3)

1971		BID PRICES HIGH	BID PRICES LOW	ASKED PRICES HIGH	ASKED PRICES LOW
OCT.	II	10 3/4	10 3/8	11 1/8	10 3/4
	12	10 5/8	10 3/8	11	10 3/4
	13	10 1/2	10 3/8	11	10 3/4
	14	10 1/4	9 5/8	10 5/8	10
	15	9 3/4	9 5/8	10 1/8	10
	18	10	9 5/8	10 3/8	10
	19	10	9 5/8	10 1/2	10
	20	9 3/4	9 5/8	10 1/4	10
	21	9 1/4	9 1/8	10 1/4	9 1/2
	22	9 1/4	8 7/8	10 1/4	9 3/8
	25	9	8 5/8	10 1/4	9 1/8
	26	8 7/8	8 5/8	10 1/4	9 1/8
	27	8 3/4	8 1/2	10 1/4	9
	28	8 3/8	7 3/8	8 3/4	7 7/8
	29	8 1/8	7 3/4	8 1/2	8 1/4
	30 - SATURDAY				
NOV.	1	9 1/4	7 7/8	9 5/8	8 1/4
	2	8 5/8	7 3/4	9	8 1/8
	3	8	7 5/8	8 3/8	8
	4	8 1/2	8 1/4	8 7/8	8 5/8
	5	8 1/2	8 3/8	8 7/8	8 3/4
	8	8 1/2	8 3/8	8 3/4	8 3/4
	9	8 3/8	8 1/4	8 3/4	8 5/8
	10	8 1/2	8 1/4	8 7/8	8 3/4
	11	8 3/8	8 1/8	8 3/4	8 3/8
	12	8 1/8	8 1/8	8 5/8	8 1/2
	15	8 1/8	8	8 1/2	8 3/8

(I4)

I97I		BID PRICES HIGH	BID PRICES LOW	ASKED PRICES HIGH	ASKED PRICES LOW
NOV.	I6	8 I/8	8	8 I/2	8 3/8
	I7	8	7 7/8	8 I/2	8 I/4
	I8	7 7/8	7 3/4	8 I/4	8 I/8
	I9	7 7/8	7 5/8	8 I/4	8
	22	7 5/8	7 5/8	8 I/8	8
	23	7 I/2	6 3/8	7 7/8	6 7/8
	24	6 7/8	6 3/4	7 3/8	7 I/8
	25 = STOCK EXCHANGES CLOSED				
	26	7 I/4	6 7/8	7 5/8	7 I/4
	29	7 3/4	7 5/8	8 I/4	7 3/4
	30	8	7 3/4	8 3/8	8 I/8
DEC.	I	8 I/8	8	8 I/2	8 I/4
	2	9 I/8	8 5/8	I0	9
	3	9 5/8	9 I/2	I0	9 7/8
	6	9 5/8	9 I/2	I0	9 7/8
	7	9 5/8	9 I/2	I0	9 7/8
	8	9 I/4	9 I/4	9 5/8	9 5/8
	9	9 I/2	9 I/4	9 7/8	9 5/8
	I0	9 5/8	9 3/8	9 7/8	9 3/4
	I3	9 5/8	9 3/8	9 7/8	9 3/4
	I4	9 I/2	9 3/8	9 7/8	9 3/4
	I5	9 3/8	9 I/4	9 7/8	9 3/4
	I6	9 I/8	8 3/4	9 I/2	9 I/8
	I7	9 3/8	9 I/8	9 3/4	9 I/2
	20	9 5/8	9 I/4	I0	9 5/8
	2I	I0	9 5/8	I0 3/8	9 3/4
	22	I0	I0	I0 3/8	I0 I/8
	23	I0	9 7/8	I0 3/8	I0 I/8
	24 = STOCK EXCHANGES CLOSED				

(I5)

	BID PRICES HIGH	BID PRICES LOW	ASKED PRICES HIGH	ASKED PRICES LOW
1971				
DEC. 27	I0	9 3/4	I0 3/8	I0 I/8
28	I0	9 3/4	I0 3/8	I0 I/8
29	I0 I/2	I0 3/8	I0 7/8	I0 3/4
30	I0 3/8	I0 I/4	I0 3/4	I0 5/8
31	II I/4	I0 5/8	II 5/8	II
1972				
JAN. 3	I2	II 3/8	I2 3/8	II 3/4
4	II 3/4	II 5/8	I2 I/8	I2
5	I2	II 7/8	I2 3/8	I2 I/4
6	I2 I/4	II 7/8	I2 3/4	I2 I/4
7	I2 I/4	I2 I/4	I2 5/8	I2 5/8
I0	II 7/8	II 7/8	I2 I/4	I2 I/8
II	II I/2	II 3/8	II 7/8	II 3/4
I2	I2 I/8	I2	I2 I/2	I2 3/8
I3	I2 I/8	I2	I2 3/8	I2 3/8
I4	I2 I/4	I2 I/8	I2 I/2	I2 I/2
I7	I3 I/8	I2 5/8	I3 5/8	I3
I8	I3 I/8	I3 I/8	I3 I/2	I3 I/2
I9	I3	I2 3/4	I3 3/8	I3 I/4
20	I2 7/8	I2 5/8	I3 I/4	I3 I/8
21	I2 I/2	I2 3/8	I2 7/8	I2 3/4
24	I2 3/8	II 7/8	I2 3/4	I2 I/4
25	II I/2	II 3/8	II 7/8	II 3/4
26	II I/2	II 3/8	II 7/8	II 7/8
27	II 3/8	II I/4	II 7/8	II 3/4
28	I2 5/8	I2 3/8	I3	I2 3/4
31	I2 7/8	I2 I/2	I3 I/4	I2 7/8

(I6)

I972	BID PRICES HIGH	BID PRICES LOW	ASKED PRICES HIGH	ASKED PRICES LOW
FEB. I	I2 7/8	I2 3/4	I3 I/4	I3 I/8
2	I3 I/2	I3	I3 7/8	I3 3/8
3	I3 I/2	I3 3/8	I4	I3 3/4
4	I3 3/8	I3 I/4	I3 3/4	I3 3/4
7	I3 3/8	I3 I/4	I3 3/4	I3 3/4
8	I3 3/8	I3 I/4	I3 3/4	I3 3/4
9	I3 3/8	I3 I/4	I3 3/4	I3 5/8
I0	I3 3/8	I3 3/8	I3 3/4	I3 3/4
II	I3 7/8	I3 3/8	I4 I/4	I3 3/4
I4	I3 5/8	I3 5/8	I4	I4
I5	I3 I/2	I3 3/8	I3 7/8	I3 3/4
I6	I3 3/8	I3 3/8	I3 3/4	I3 I/2
I7	I4	I3 7/8	I4 3/8	I4 I/4
I8	I4 I/8	I3 7/8	I4 I/2	I4 I/4
2I = STOCK EXCHANGES CLOSED				
22	I4	I4	I4 3/8	I4 3/8
23	I4 I/4	I4 I/8	I4 5/8	I4 I/2
24	I4 3/8	I4 I/8	I4 7/8	I4 I/2
25	I5	I4 5/8	I5 I/8	I5
28	I4 7/8	I4 3/4	I5 7/8	I5 I/8
29	I4 5/8	I4 I/2	I5	I4 7/8

NOTE = THE ABOVE QUOTATIONS REPRESENT PRICES BETWEEN DEALERS AND DO NOT INCLUDE RETAIL MARK=UP, MARK=DOWN OR COMMISSION. THEY DO NOT REPRESENT ACTUAL TRANSACTIONS, AND HAVE NOT BEEN ADJUSTED FOR STOCK DIVIDENDS OR SPLITS.

NATIONAL QUOTATION BUREAU, INC.

Dominick De Quarto

DOMINICK DEQUARTO jc
LIBRARY MANAGER

DD:j

NATIONAL QUOTATION BUREAU
INCORPORATED

CHICAGO
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BOSTON
LOS ANGELES

AUGUST 28, 1974

A REPORT

QUOTATIONS - FROM THE NATIONAL DAILY QUOTATION SERVICE-EASTERN SECTION

ISSUE - INTERWAY CORPORATION (DELAWARE) COMMON STOCK

1972	BID PRICES HIGH	BID PRICES LOW	ASKED PRICES HIGH	ASKED PRICES LOW
MARCH 1	14 1/2	14 1/2	14 7/8	14 7/8
2	14 3/4	14 1/2	15 1/8	14 7/8
3	15 1/8	15	15 1/2	15 3/8
6	15 1/8	15	15 5/8	15 3/8
7	15 3/4	15 1/8	16 1/8	15 1/2
8	16 3/8	16 1/4	16 3/4	16 5/8
9	16 1/8	16 1/8	16 1/2	16 1/2
10	15 5/8	15 1/2	16	15 7/8
13	15 3/8	15	15 3/4	15 3/8
14	14 5/8	14 1/2	15	15
15	14 7/8	14 3/4	15 1/4	15 1/8
16	14 3/4	14 5/8	15 1/4	15
17	14 7/8	14 3/4	15 1/4	15 1/8
20	15 1/4	14 7/8	15 5/8	15 1/4
21	15 1/4	15	15 5/8	15 3/8
22	15 1/4	15 1/8	15 5/8	15 1/2
23	15 1/4	14 7/8	15 5/8	15 1/4
24	15	14 7/8	15 3/8	15 1/4
27	14 7/8	14 5/8	15 1/4	15
28	15	14 5/8	15 3/8	15
29	14 7/8	14 3/4	15 1/4	15 1/8

1972		BID PRICES HIGH	BID PRICES LOW	ASKED PRICES HIGH	ASKED PRICES LOW
MARCH	30	14 7/8	14 7/8	15 1/4	15 1/4
APRIL	3	15	14 7/8	15 3/8	15 1/4
	4	14 7/8	14 5/8	15 1/4	15
	5	14 7/8	14 5/8	15 1/4	15
	6	14 3/4	14 3/8	15 1/8	14 3/4
	7	14 1/4	14 1/8	14 5/8	14 1/2
	10	14 1/4	14 1/8	14 5/8	14 1/2
	11	14 3/8	14 1/4	14 3/4	14 5/8
	12	14 1/4	13 5/8	14 5/8	14
	13	14	13 1/2	14 3/8	13 7/8
	14	13 3/4	13 5/8	14 1/8	14
	17	13 7/8	13 5/8	14 1/4	14
	18	13 3/4	13 5/8	14 1/8	14
	19	14 7/8	13 3/4	15 1/4	14 1/8
	20	14 1/2	14 1/8	14 7/8	14 1/2
	21	14 3/8	14 1/8	14 3/4	14 1/2
	24	14 3/8	14 1/4	14 3/4	14 5/8
	25	14 1/4	14 1/8	14 5/8	14 1/2
	26	14 1/4	14 1/4	15	14 5/8
	27	15 5/8	14 1/4	16	14 5/8
	28	15 7/8	15 5/8	16 1/4	16
MAY	1	16	15 5/8	16 3/8	16
	2	15 3/4	15 5/8	16 1/8	16
	3	15 7/8	15 3/4	16 1/4	16 1/8
	4	15 1/8	14 3/4	15 1/2	15 1/8
	5	14 7/8	14 3/4	15 1/4	15 1/8

1972		BID PRICES HIGH	BID PRICES LOW	ASKED PRICES HIGH	ASKED PRICES LOW
MAY	8	15	14 5/8	15 3/8	15 1/8
	9	15 1/4	14 1/2	15 5/8	15 1/8
	10	14 1/4	13 7/8	14 3/4	14 3/8
	11	14 1/8	14	14 1/2	14 1/2
	12	15 5/8	14 1/8	16	14 1/2
	15	15 5/8	15 1/2	16	16
	16	15 5/8	15 5/8	16 1/8	16
	17	15 3/4	15 5/8	16 1/8	16
	18	16 1/2	15 5/8	16 7/8	16
	19	16 1/2	16 3/8	16 7/8	16 3/4
	22	16 5/8	16 1/2	17	16 7/8
	23	16 3/8	15 7/8	16 3/4	16 1/4
	24	15 7/8	15 3/4	16 1/4	16 1/8
	25	15 3/4	15 3/4	16 1/4	16 1/8
	26	15 7/8	15 3/4	16 3/8	16 1/8
	30	15 7/8	15 5/8	16 1/4	16
	31	15 5/8	15 1/4	16	15 3/4
JUNE	1	15 1/2	15 1/8	15 7/8	15 1/2
	2	15 1/8	14 7/8	15 5/8	15 1/4
	5	15	14 3/8	15 3/8	14 3/4
	6	14 3/8	14 1/8	14 7/8	14 5/8
	7	14 1/8	13 1/2	14 5/8	13 7/8
	8	12 3/4	11 1/2	14 5/8	12 1/2
	9	12 3/4	12 1/4	13 1/2	13
	12	13	12	13 3/4	12 3/4
	13	13 3/4	13	14 1/2	13 3/4

1972		BID PRICES HIGH	BID PRICES LOW	ASKED PRICES HIGH	ASKED PRICES LOW
JUNE	I4	I4 I/2	I4 I/4	I5	I5
	I5	I4 3/8	I4 I/4	I5	I4 5/8
	I6	I4 I/4	I3 I/2	I5	I4 I/4
	I9	I2 7/8	I2 I/4	I3 I/2	I3
	20	I2 7/8	I2 3/8	I3 I/4	I2 7/8
	2I	I3 I/4	I3	I4	I3 I/2
	22	I3 I/4	I2 3/4	I3 3/4	I3 I/4
	23	I2 7/8	I2 3/4	I3 3/8	I3 I/4
	26	I2 7/8	I2 3/8	I3 3/8	I2 7/8
	27	I2 5/8	I2 3/8	I3 I/8	I2 7/8
	28	I2 I/2	I2 3/8	I3	I2 7/8
	29	I2 I/2	I2 3/8	I3	I2 7/8
	30	I2 3/8	I2 I/8	I3 I/8	I2 3/4

NOTE - THE ABOVE QUOTATIONS REPRESENT PRICES BETWEEN DEALERS AND DO NOT INCLUDE RETAIL MARK-UP, MARK-DOWN OR COMMISSION. THEY DO NOT REPRESENT ACTUAL TRANSACTIONS, AND HAVE NOT BEEN ADJUSTED FOR STOCK DIVIDENDS OR SPLITS.

NATIONAL QUOTATION BUREAU, INC.

DOMINICK DEQUARTO
LIBRARY MANAGER

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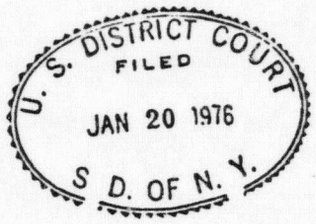

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

REA EXPRESS, INC.,

Plaintiff,

-against-

INTERWAY CORPORATION; INTEGRATED CONTAINER SERVICE, INC.,

Defendants.

73 Civ. 560-CLB

FINDINGS AND CONCLUSIONS

#43754

Bricant, J.

By its amended and supplemental complaint, plaintiff REA Express, Inc. ("REA") seeks to recover damages under three separate counts against defendants Interway Corporation[1] ("Interway") and its wholly-owned subsidiary, Integrated Container Service, Inc. ("ICS").

This Court has subject matter jurisdiction pursuant to Section 27 of the Securities Exchange Act of 1934, 15 U.S.C. §78aa and principles of pendent jurisdiction.

Count I of the complaint relies upon §10(b) of the Securities Exchange Act of 1934, 15 U.S.C. §78i(b) and Rule 10b-5, 17 C.F.R. §240.10b-5, promulgated thereunder by the Securities and Exchange

Commission ("SEC"). Plaintiff claims that in the Fall of 1968 ICS made fraudulent misrepresentations to REA, and falsely and fraudulently omitted to disclose material facts in connection with an offer, and also a subsequent agreement, to purchase the stock of REA Leasing Corporation ("Realco"), then a wholly-owned subsidiary of REA.[2/]

On October 11, 1968, REA and ICS entered into a written agreement (the "Purchase Agreement") for the sale to ICS of 51% of the stock of Realco for $30,000,000.00 and for the sale to ICS of $2,400,000.00 of 5 1/2% subordinated debentures at par value, representing money which Realco owed REA plus accrued interest from October 1, 1968. The interest amounted to $11,000.00. (Joint Exhibit No. 107).

In a letter of the same date ("Letter Agreement"), REA received an option, good until July 11, 1969, to "put", or sell any or all of the remaining 49% of the Realco stock to Interway for a total consideration of 440,000 shares (or a proportionate amount thereof) of preference stock of Interway, which was to be convertible into Interway common on the basis of 1.5 shares of common stock for each share of preferred. The closing took place on November 1, 1968,

at which time ICS purchased 51% of the stock of Realco and the subordinated debentures, and paid the cash consideration specified in the Purchase Agreement.

Counts II and III, pleaded in the alternative, are based upon the alleged breach by Interway of an agreement with REA to register with the SEC common stock of Interway obtainable by REA upon the conversion by it of shares of Interway preference stock which REA received as part of the consideration for the sale of certain of its shares of Realco. These counts differ only as to the theory of damages claimed.

Defendants counterclaimed for damages arising out of alleged breaches by REA of representations and warranties contained in the Purchase Agreement executed by REA and ICS on October 11, 1968.

The action was tried before me without a jury on March 3, 4 and 5, 1975. Post trial briefs have been submitted and considered.

REA is a Delaware corporation which, prior to June 1968, was known as Railway Express Agency, Incorporated, having its principal place of business in New York, New York. Since its incorporation in 1928 it has been engaged primarily in the business of providing expeditious door-to-door transportation, primarily for

small shipments. Until 1969, all of the outstanding capital stock of REA was owned, directly or indirectly, by approximately 60 Class I railroads.

Prior to November 1, 1968, REA owned all of the outstanding capital stock of Realco. Since that date Interway has acquired 100% of Realco. At all relevant times, Realco has been in the business of leasing trailers, primarily to railroads, for their "trailer-on-flat-car" service, commonly known as "piggybacking".

Interway is a Delaware corporation which also has its principal place of business in New York, New York. It owns all of the stock of ICS, Realco, and certain other subsidiaries. It conducts no business of its own.

Defendant ICS is also a Delaware corporation, and is the successor to Integrated Container Service, Inc., a Pennsylvania corporation, incorporated in 1962. In October 1968, this Pennsylvania corporation transferred its assets and business (subject to its liabilities) to ICS in return for all of the capital stock of ICS. The Pennsylvania corporation was then merged into Interway and in conjunction therewith its shareholders exchanged their shares for Interway shares. At all relevant times ICS and its predecessor,

Integrated Container Service, Inc. in Pennsylvania, has been in the business of leasing to others (primarily ship owners) cargo containers and accessory equipment used by ocean carriers for the transportation of freight.3/

On January 15, 1969, REA exercised part of its option by electing to sell an additional 13% of the Realco stock to Interway. The preferred stock of Interway which REA received was converted into common stock and sold as part of a public offering of Interway common stock in March 1969. From this sale REA realized $7,865,316.00 after expenses.

On June 23, 1969, after some negotiations leading to a slight modification of the original agreement, REA exercised the balance of its option, and Interway obtained the remaining 36% of the Realco stock in exchange for $4,714,290.00 in cash, and the issuance to REA of 143,673 shares of Interway convertible preferred stock. This latter stock was unregistered. REA subsequently received 21,552 additional shares of this unregistered convertible preference stock as stock dividends on the 143,673 shares.

In June 1971, acting pursuant to the rights specifically granted to it at page 4 of the Letter Agreement of October 11, 1968

(Joint Exhibit No. 109), REA requested by letter that Interway register with the SEC the common stock of Interway which REA would receive upon the conversion by it of all the Interway preferred stock it then held. No such registration was ever made. However, in February 1974 Interway purchased REA's total holdings of 165,225 shares of convertible preferred for $2,726,212.00, with REA paying $25,000.00 to a third party for services rendered in arranging the sale.

Count I--the Rule 10b-5 claim.

The plaintiff has shown that ICS's offer contained affirmative material misrepresentations, and that ICS's management was reckless in making these statements. However, there is no credible evidence that the plaintiff or its advisors relied on the misrepresentations in making the decision to accept ICS's offer over the competing bids.

In relation to its Rule 10b-5 claim, it should be noted that REA can be considered either as a defrauded seller of Realco stock or as a defrauded purchaser of an option to buy shares of Interway convertible preferred. See Zeller v. Bogue Electric Manufacturing Corp., 346 F. Supp. 651, 654, n.4 (S.D.N.Y. 1972),

rev'd. on other grounds 476 F.2d 795 (2d Cir.), cert. denied 414 U.S. 908 (1973). Since, under either view the misrepresentations were made in connection with the purchase or sale of a security, there can be no doubt that Rule 10b-5 is applicable to this transaction. Blue Chip Stamps v. Manor Drug Stores, 421 U.S. 723 (1975). For purposes of clarity and consistency, REA will be referred to as a "seller" who accepted ICS's offer to purchase the stock of Realco.

On September 23, 1968 ICS submitted two offers in the alternative to purchase a controlling interest in Realco. In its letter to REA, which was hand delivered within New York State, transmitting the offers, ICS made the following statement (Joint Exhibit No. 78, p. 2): "Based upon the current demand for the Company's equipment and services, ICS anticipates that equipment in use in its pool will at least double in 1969." At page 7 of the same letter, in connection with the preparation of an exhibit showing the effect of combining the earnings of ICS and Realco, ICS stated: "Based on its forecasts, its experience and evaluation of the market available to it, ICS anticipates net earnings after taxes in excess of $2,000,000 for the current

calendar year and in excess of $4,000,000 in 1969."

In fact, as events later showed, the value or amount of the equipment in use did not come near doubling in 1969, and the historic growth pattern of ICS came to an abrupt halt. Furthermore, after-tax earnings for 1969 were only $1,793,000.00, of which all but $324,100.00 was attributable to the earnings of Real

I find and conclude that these are serious discrepancie and amount to affirmative material misrepresentations. While the mere fact that a forecast is inaccurate does not make it fraudule 1 A. Bromberg, Securities Law: Fraud, SEC Rule 10b-5, §5.3 at p. (1974), the evidence shows, and I find, that these particular for casts were untrue statements of fact. These projections must be regarded and interpreted as a representation that in September, 1968, it was the informed, reasonable and sincere belief of ICS management that both equipment in use and earnings would double i 1969. Such a statement implies that ICS used a reasonable metho of calculation and that the figures which were arrived at and furnished to REA had a valid basis. The making of such projecti is a normal function of modern corporate management. The eviden shows that these forecasts were based on out-of-date computatio

The latest projections for 1969 had been made in a five-year forecast drawn up in 1967, and there was sufficient information known to ICS to show that by the Fall of 1968 business conditions were beginning to change so as to make this 1967 forecast obsolete. Furthermore, there had been no recent analysis of ICS's business prospects. Mr. Needleman, the controller of ICS who was usually responsible for drawing up such forecasts, testified at his deposition that no new projections for 1969 were asked for from him by top management, in connection with the statements made in the offer to REA. Finally, from the absence of any workpapers in its files, it is reasonable to conclude that Price Waterhouse, ICS's accountants, did not participate in the preparation of these forecasts.

The inference naturally follows, and the Court infers from the entire testimony that these figures were not arrived at in a rational fashion but were thrown in to make the ICS offer more attractive to REA than the competing offers.

Absent a reasonable method of preparation or a valid basis, reckless and unfounded statements as to future earnings and future acquisitions of equipment are sufficiently misleading to be actionable under Rule 10b-5. Marx v. Computer Sciences Corp., 507 F.2d 485, 490

(9th Cir. 1974); Schuller v. The Slick Corporation, CCH Sec.Law Rptr. ¶95,065 at p. 97,739 (S.D.N.Y. April 3, 1975).

While the plaintiff has alleged that ICS failed to disclose material facts concerning its business in its offering letter, based upon all of the evidence, the Court finds that there were no material omissions. The factors which led to a downturn of ICS's business in 1969 (the lengthy longshoremen's strike, the Army's cancellation of a big contract, and the increase in interest rates) were neither known to nor were foreseeable by ICS's management in the Fall of 1968.

There is sufficient evidence of the use of interstate means to satisfy the requirements of Rule 10b-5. Although the actual offer to purchase the Realco stock was hand delivered to REA's corporate offices in New York City where ICS was also located, I find that Mr. Pedersen, the secretary of ICS whose office is in Chicago, Illinois, spoke on the telephone with top ICS management in New York in furtherance of the offer. In addition, Mr. Pedersen travelled from Chicago to New York in order to work on the draft of the ICS offer, which resulted in the sale of securities by REA to Interway. Furthermore, meetings between REA, Realco and ICS management personnel were arranged by intrastate telephone calls in New

York. Since Rule 10b-5 concerns the use of any instrumentality of interstate commerce, even an intrastate telephone call will satisfy the jurisdictional requirement, as all telephone lines are integral parts of an interstate network. Kerbs v. Fall River Industries, 502 F.2d 731, 737-38 (10th Cir. 1974); Myzel v. Fields, 386 F.2d 718, 727 (6th Cir. 1967).

Since there is insufficient credible evidence to support such a finding, I decline to find that the letter which Michael Kluge, President of ICS, sent on October 4, 1968 to Ray Jordan, the President of REA, which modified in several important respects the initial hand-delivered offer of September 23rd, was delivered by mail.

Materiality, an essential element of a Rule 10b-5 claim, has also been proven here. Whether one states the test as " ... whether a reasonable investor might have considered them [the facts misrepresented] important" in making his investment decision [Affiliated Ute Citizens v. United States, 406 U.S. 128, 153-54 (1972); Schlick v. Penn-Dixie Cement Corp., 507 F.2d 374, 381 (2d Cir. 1974)], or as "whether a reasonable man would attach importance [to the variance between the truth and the facts misrepresented] in determining his choice of action in the transaction

in question", List v. Fashion Park, Inc., 340 F.2d 457, 462 (2d Cir. 1965), under either test there can be no doubt that both of these statements were material. See Marx v. Computer Science Corp., 507 F.2d 485, 489, fn. 6 (9th Cir. 1974) for an interesting analysis of these apparent conflicting criteria for materiality.

Clearly earnings projections of a company constitute a prime factor in estimating the worth of its stock. Equipment in use usually relates historically to gross revenues; as one increases, so should the other.[4/] See Marx v. Computer Sciences Corp., supra, at 489. For REA, the price and value of the ICS stock were of critical importance. REA, which had received a number of other offers for Realco, was interested in negotiating for an option which would give it a substantial equity interest in the future of the purchaser, and Realco.

Insofar as concerns the presence of scienter, plaintiff here has shown that ICS's top management did not use a reasonable method in preparing the earnings projection which was incorporated into the September 23rd offer.

In Republic Technology Fund, Inc. v. Lionel Corp., 483 F.2d 540, 551 (2d Cir. 1973), the court held:

> "something short of specific intent to defraud is required and something more than 'mere' negligence; certainly, knowledge of the fact that the figures created a false picture is enough, and on the part of sophisticated corporate managers a reckless disregard of the truth is sufficient."

Facts previously found, supra, p.8 , that (a) the forecast was not based on a current analysis of ICS's prospects for 1969 but on an out of date projection which had been prepared in 1967; (b) ICS's own financial officers, the controller and his staff, did not prepare figures; (c) no accountant's worksheets or other source information, or statistical input by ICS operations personnel which might have been used as a basis for the projection exist compel our finding that the figures were based not on a careful evaluation of all the factors, but on the conclusory assumption on the part of ICS's top management that there was an ever-expanding market for container leasing, and a general emotional feeling that ICS could continue its historic growth pattern, and double its earnings in 1969.

While many people did share a favorable impression of ICS and the container leasing business, it was at least reckless for ICS to use these baseless earnings projections in connection

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with a major corporate action such as the offer to purchase Realco in part with Interway stock.

Plaintiff contends that it need not actually prove it relied on the misleading statements made by ICS. The factual situation here involves basically affirmative misrepresentations, as opposed to omissions. We have here face-to-face dealings between sophisticated, well-advised corporate managers, rather than impersonal dealings among investors in an auction market. In this action proof of actual reliance on a false statement is an essential prerequisite to recovery on a Rule 10b-5 claim. Precedents cited by plaintiff do suggest a loosening of the traditional strict test of reliance in certain types of Rule 10b-5 cases, but none of them are controlling on the facts here. Affiliated Ute Citizens v. United States, 406 U.S. 128, 153-54 (1972) involved "primarily a failure to disclose" and the Supreme Court stated: "Under the circumstances of this case ... positive proof of reliance is not a prerequisite to recovery." REA has proven here two misrepresentations, rather than misleading omissions or a "failure to disclose."

In Competitive Associates, Inc. v. Laventhol, Krekstein, Horwath & Horwath, 516 F.2d 811 (2d Cir. 1975), a grant of summary

in favor of defendants was reversed. The Court held that where "both misrepresentations and omissions are alleged to be only one aspect of an elaborate scheme to defraud," the plaintiff need not prove direct reliance upon false financial statements. Id. at 814. Here the plaintiff has neither proven nor even alleged any "elaborate scheme to defraud."

More on point than these cases cited by plaintiff is Titan Group, Inc. v. Faggen, 513 F.2d 234 (2d Cir. 1975), a case which involved both misrepresentations and misleading omissions. The Court of Appeals considered each such category separately. It affirmed the District Court's finding that there had been no reliance on the misrepresentations, and its conclusion that the omissions had not been material. See also, The Reliance Requirement in Private Actions Under SEC Rule 10b-5, 88 Harv. L. Rev. 584 (1975); Lorber v. Beebe, CCH Sec.Law Rptr. ¶95,363 (S.D.N.Y. 12/3/75).

I conclude that reliance must be proven under the circumstances of this case. Plaintiff has not carried its burden, and accordingly, its Rule 10b-5 claim must fall.

The evidence shows, and I find, that in mid-1968 REA was in desperate need of working capital. A deficit of more than

Fifteen Million Dollars was forecast by the end of 1968, and it needed so-called "free cash" which could be used for operations, rather than paying off existing obligations. REA was losing money at the time, and the railroads which had formerly financed REA's operations were reluctant to make any more funds available.[5/] Nor was the regular money market open to REA at that time.[6/]

REA retained McKinsey & Co., a noted management consulting firm, to advise it on possible sources for raising cash. After a careful analysis of its current and prospective financial condition, McKinsey concluded that the sale of Realco offered REA the best opportunity to raise free cash. This conclusion was concurred in by the investment banking firm of Kuhn, Loeb & Co., which had been acting as REA's financial advisor.

On July 1, 1968, REA's Board of Directors approved the written recommendation of McKinsey, and requested Kuhn, Loeb to advise REA in connection with its effort to sell all or part of Realco at the highest possible price. By letter dated August 16, 1968, REA solicited bids for the purchase of Realco from 47 different companies. In addition to the ICS offer, REA received offers from three other companies, and it requested Kuhn, Loeb to evaluate the

various offers. The evidence shows and I find, that Kuhn, Loeb evaluated the ICS offer No. 2, i.e., the one which was eventually accepted, at between $59,600,000.00 and $64,400,000.00. The next highest offer was Pepsico's which was evaluated at $41,776,800.00. Kuhn, Loeb concluded that ICS's offer was the most advantageous, and it recommended that REA accept the ICS offer. McKinsey concurred in this conclusion and also recommended acceptance of the ICS offer.

Mr. John Guest, a partner in the Kuhn, Loeb firm, testified at his deposition that after the bids were received, he met with all three of the trustees, who were then running REA.[7/] He told them that there was a market risk involved in acquiring ICS stock, which was then selling at a high price earnings multiple, because (1) ICS was a relatively new company, (2) the container leasing business was a relatively new industry, and (3) the stock market in general might be vulnerable to a decline. The trustees stated that they understood these three risks. I find Mr. Guest's testimony credible on this point.

The evidence shows, and I find, that REA's Board of Directors (which in the Fall of 1968 consisted of Mr. William Taylor, the Chairman, and Mr. Ray Jordan, Mr. Robert Johnson and

Mr. Robert Fuller, the three trustees) in reaching the decision to sell Realco had available to it and relied solely upon the expert advice of Kuhn, Loeb and McKinsey & Co. Mr. Guest testified, and I find his testimony persuasive on this point, that while he had seen the 1969 projections, which the Court finds reckless, he based his opinion that ICS earnings were likely to increase upon his own discussions with ICS officers and directors, and on his own independent knowledge of the container industry and its growth prospects. After the closing, Mr. Guest expressed the opinion to the trustees that the ICS offer was higher than Kuhn, Loeb had expected.

Mr. Marvin Bower, the consulting Director for McKinsey on its REA assignment, testified at his deposition that he had never seen the earnings projections contained in the offering letter of September 23rd. He further testified that McKinsey recommended acceptance of the ICS offer based on Kuhn, Loeb's opinion, and the fact that it produced the largest amount of cash, which was needed immediately in order to save REA. I find Mr. Bower's testimony credible on this point.

Thus none of the experts consulted by REA testified

that they relied on the misleading statements. Even more damaging to REA's contentions here is the testimony of Mr. Johnson, one of the trustees who had responsibility for the ultimate decision. As an experienced businessman, Johnson testified that he knew that forecasts sometimes did not come true. While he had seen the 1969 projection in ICS's offering letter, he was not able to say that if this projection had been omitted, the trustees would have rejected the ICS offer and accepted the next highest bid. As other factors which induced him to accept the ICS offer, Mr. Johnson mentioned his own favorable opinion of the growth prospects of the container leasing business, the fact that prestigious firms such as Lehman Brothers had an interest in ICS, and the opportunity which the ICS offer gave to REA to share through its potential stock ownership in Interway, in the future prosperity of the container industry. Read most favorably to the plaintiff, Johnson's testimony falls far short of the positive proof of reliance that is necessary here.

Finally, there is the testimony of Mr. William Taylor, then Chairman of the Board of REA. While the ultimate decision to sell Realco was in the hands of the three trustees, Mr. Taylor

says that he had hand-picked the trustees and he presided at their meetings. As the only man among the group experienced in the transportation field, the trustees gave weight to his advice and recommendations.[8/] Taylor's testimony shows that long before Kuhn, Loeb reported its evaluation to the trustees, he had concluded that the ICS offer was far and away superior to the others, because it offered "$32.4 Million [cash] ... plus a put for stock having considerable market value and a right to piggy-back on a secondary offering ..." (Taylor deposition, Ex. D at p. 29). Taylor testified further, and plaintiff has failed to rebut this, that in evaluating the ICS offer, he gave virtually no weight to the earnings projection, which he knew could err in either direction. What he did rely on was his own evaluation of the container business and his analysis of the stock market. Taylor could not recall any meeting with the trustees where the ICS forecasts were specifically discussed, and he stated that even without this statement, he would have considered that, of the competing proposals, the ICS offer was best. Tested by hindsight, Mr. Taylor was right. Indeed, as it turned out, REA has received in net cash for the sale of Realco, the sum of $47,691,818.00, a figure which is close to

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twenty times Realco's earnings in 1968, and exceeds by Six Million Dollars the value of the next highest offer received for Realco. (See ¶17 of Stipulated Facts).

I conclude that REA would have accepted ICS's offer for Realco even if the untrue statements about future earnings and equipment acquisition had not been made. The evidence shows, and I find, that given its desperate need for immediate cash to run its business, REA was in no position to reject the ICS offer, which, despite the reckless misrepresentations, was substantially better than the other offers. Indeed, to have done so would have exposed the trustees to suit for breach of fiduciary duty by the railroads, who were the beneficiaries of the voting trust.

The favorable view which REA's retained experts and its directors had of the container leasing business in general, and of ICS in particular, and the immediate need for working capital to survive, were broad policy considerations which induced REA to accept the ICS offer. The earnings projection and equipment acquisition forecast were simply details which were thrown into the discussion, as to which the evidence shows, and I find, that those acting for REA as a purchaser or seller of securities neither

considered nor relied upon at the time of the transaction. Indeed, financial experts at REA, Kuhn, Loeb and McKinsey knowing the parties were engaged in arms length transactions, never asked for further clarification of these projections, or for the source materials supporting them. REA, its experts and those acting for it, did not rely on the misleading statements of ICS's projected earnings and equipment acquisition plans for 1969. Accordingly, plaintiff has not proven a causal link between ICS's statements and its alleged injury. As to Count I, defendants are entitled to judgment.

Counts II and III.

Counts II and III plead alternative theories with respect to the damages allegedly suffered by REA resulting from the failure of Interway to effect a registration of REA's Interway shares as it had agreed to do. Interway's obligation to register the common stock on conversion of the convertible preferred shares was not breached where the written consents of the holders of record of the preferred shares was not obtained and these holders had their own reasons not to convert.

The October 11th Letter Agreement by which REA accepted ICS's offer to purchase Realco contained the following provision (at pp. 3-4):

> "ICS agrees that, at any time and from time to time following an acceptance by REA of all or any part of your additional offer or following the written notice of REA of intent to accept all or any part of such offer on or after the time the registration statement hereinafter referred to becomes effective, upon the written request of REA, ICS will, at its expense ... use its best efforts to register not less than the number of shares of ICS Common Stock (to be received by REA on conversion of the Preferred Stock) so requested to be registered under the Securities Act of 1933 ..., and to keep such registration effective for a period of at least nine months."

Pursuant to this provision, by letter dated June 14, 1971, REA requested Interway to register under the Securities Act of 1933 the common stock which it would receive upon conversion of the 158,041 shares of Interway convertible preferred which it then held. The parties have stipulated that as of June 14, 1971, the holder of record of one-half of these preference shares was Kugler & Co., and the rest were held of record by Carr & Co.

Kugler & Co. was the nominee of Morgan Guaranty Trust Company of New York ("Morgan"). The shares held by Morgan

pursuant to a trust indenture naming Morgan as trustee which had been executed in connection with a loan made to REA by the Equitable Life Assurance Society of the United States ("Equitable"). Carr & Co. was also a nominee and was holding the stock for another third party creditor of REA.

By its letter of July 1, 1971, Interway informed REA (1) that the written consent of these holders of record was necessary before Interway could proceed with the registration, and (2) that the convertible preferred shares "must be converted into common shares before further efforts can proceed to register the common stock." REA claims that Interway's insistence upon conversion before registration constituted a breach of the October 11, 1968 Letter Agreement.

There can be no doubt that REA had the right to request a registration of the common stock which would be received upon the conversion of the preferred. Interway obviously had a correlative duty under the Letter Agreement to use its best efforts in connection with the registration. But Interway also had a responsibility to follow the provisions of its Certificate of Incorporation, and stockholders like REA must hold their shares

subject to the provisions in the Certificate. Breswick & Co. v. Harrison-Rye Realty Corp., 2 A.D.2d 769, 154 N.Y.S.2d 625 (2d Dept. 1956), aff'd., 4 N.Y.2d 685, 171 N.Y.S.2d 81 (1958). Paragraph 4(c) of the Certificate states:

> "Shares of Preference stock shall be convertible, at the option of the holders thereof, at any time at the office of the corporation in New York, New York, into fully paid and non-assessable shares of Common Stock at a price of $66 2/3; ...."

Conversions can occur only when the holders of the preference shares exercise their option to convert. Furthermore, the "holders" referred to are the shareholders of record. In matters pertaining to important corporate actions such as a registration or a conversion of preferred stock into common which must necessarily affect the rights of the preferred shareholders, a corporation is entitled to deal in all respects with its shareholders of record. Pierre J. LeLandais & Co., Inc. v. MDS-Atron, 387 F.Supp. 1310, 1317 (S.D.N.Y. 1974); Todd v. Maryland Casualty Co., 155 F.2d 29 (7th Cir. 1946). Fletcher, Cyclopedia Corporations, §5306 (1971 ed.).

Here, Interway had the right to insist upon consent of the holders of record to a conversion of the preferred stock. To

tender merely the consent of pledgors or beneficial owners such as REA would be to undermine the position of lending institutions and other pledgees who here have taken the preferred stock relying theoretically at least in part upon the superior dividend, liquidation and redemption rights which the preferred enjoyed over the common. In this case the lenders were so relying. The parties have stipulated that one McCurdy of Equitable telephoned Irving Jenkins of REA on August 12, 1971 to advise him that Equitable woul not release the certificates, and would not give its nominee, Kugle & Co., unqualified approval to convert at that time. Equitable wanted to protect its security interest as trustee, and was concerned about Interway's financial position. McCurdy pointed out that the preferred stock had a liquidation value of $100.00 per sha and the common stock had no value on liquidation.[9/]

Interway thus had a legitimate interest in obtaining the consent of the holders of record before proceeding with the conversion of the preferred and subsequent registration of the common. Since the actual physical act of conversion could not take place until the holders of record delivered the preferred certificates to Interway's offices, it was implicit in the Letter Agreement that a request for conversion would be made (or at least consented to in

writing) by the holder of record of the preferred shares, whoever that might be. REA never furnished the written consents of the holders of record and without them its request for registration was fatally deficient. Under these circumstances it cannot be said that Interway breached the Agreement to register.

Therefore, on Counts II and III, I find for the defendants.

The Counterclaim.

The plaintiff warranted both the collectability of Realco's accounts receivable and the absence of any liabilities not reflected or reserved against in its audited financials of June 30, 1968. These warranties were breached, and the defendant is entitled to recover on its counterclaim, subject to the loss deductible provision as to the first $50,000.00.

In paragraph 4 of the Purchase Agreement the seller, i.e. REA, made several representations and warranties. This paragraph states in relevant part:

> "4. Representations of Seller. Seller represents, warrants and agrees as follows:
>
> * * *
>
> (c) Seller has furnished to Buyer a true and correct copy of the audited consolidated balance sheet of Realco and subsidiaries, as of June 30, 1968, and the related statement of income and retained earnings for the year then ended, together with the related report of Peat, Marwick Mitchell & Co., independent

public accountants. Said financial statements are true and correct. Except to the extent reflected or reserved against in the consolidated balance sheet as of June 30, 1968, Realco, as of the date thereof, had no liabilities or obligations of a nature customarily reflected in a corporate balance sheet prepared in accordance with generally accepted accounting principles,... As of June 30, 1968 Realco had no liabilities of any nature contingent or otherwise not fully reflected or reserved against in its consolidated balance sheet as of June 30, 1968. [Emphasis added].

* * *

(f) None of the accounts and notes receivable of Realco reflected in the consolidated balance sheet of Realco and subsidiaries as of June 30, 1968, are subject to counterclaims or set-offs and all of such accounts and notes receivable are (to the extent not collected since June 30, 1968) good and collectible at the aggregate recorded amounts thereof, less the amounts of the applicable reserves or allowances reflected in said consolidated balance sheet for doubtful accounts, overcharge, noncollectible items and for allowances and discounts."

There was $9,540,582.00 in accounts receivable listed on the June 30, 1968 financials, and a reserve of $152,885.00 for uncollectible items. Under the warranty in paragraph 4(f), REA was responsible for any excess of uncollectible accounts over the reserve.

During trial, counsel stipulated that items 2, 4 and 9 of Defendants' Ex. P, totalling $116,342.00 of claims against the Tennessee Central Railroad, the Central Railroad of New Jersey and REA itself were uncollectible accounts of Realco for which REA would be liable under its warranty. In addition, I find that $34,940.00 and $11,300.00 (items 3 and 10) due respectively from the Penn Central and Lehigh Valley Railroads as of June 30, 1968 were also uncollectible. Both of these railroads are presently bankrupt. REA's contention that these balances could have been collected because these railroads were paying current bills is refuted by the testimony of Mr. Pluemer, Realco's controller, who stated that there were inherent delays for as long as three years in billing and collecting the receivables. This was due to the nature of Realco's business, which is similar to the interchange of rolling stock among railroads. REA was aware of these delays, and it also knew that Realco's practice was to apply payments which were received, not to the oldest outstanding accounts, but only to those receivable claims which had already been identified. This is normal railroad accounting practice.

I also find that items 5 through 8 on Defendants' Ex. P were within the warranty of paragraph 4(f) of the Purchase Agreement.

REA's argument that it never warranted these estimated, as opposed to identified, receivables for the years 1965 through June 30, 1968 is specious, in view of the fact that the financials, incorporated by reference into the warranty, contain a footnote stating that the receivables were derived from revenue estimates. Mr. Pluemer testified, and I find, that most of Realco's Nine Million Dollars in receivables as of June 30, 1968 were estimates. To read the express warranty as REA proposes would be to strip it of any real meaning. The language states that the accounts are "good and collectible at the aggregate recorded amounts thereof," less the applicable reserves. The evidence shows that for the period 1965 through June 30, 1968 Realco over-estimated its accounts receivable by $31,803.00, and that this amount subsequently had to be written off. It should be pointed out that this figure is net, arrived at by taking the total of overestimates ($220,915.00) and subtracting a favorable adjustment for 1967, when Realco collected $189,112.00 more than it had estimated.

Defendants should also recover for items 11 and 12. These amounts, respectively $37,155.00 and $12,073.00, represent pre-June 30, 1968 accounts which Realco was unable to collect

because it could not identify the customers to be billed. These items had to be written off because despite a request from Realco, REA never supplied the information which was needed to identify these customers. Under its warranty REA must make good on these write-offs.

The total net amount of uncollected receivables which REA warranted as good and collectible is $243,613.00. From this amount must be deducted $152,885.00, the reserve which was set aside in the financial statement. The difference, i.e. $90,728.00 is the amount of damage which Interway suffered because of REA's breach of the warranty in paragraph 4(f).

REA also breached the warranty contained in paragraph 4(c). It had liabilities which were not fully reflected or reserved against in the balance sheet of June 30, 1968. It had excess accounts payable in the amount of $49,236.00 owing to firms which repaired its trailers. There was no accrual for such repair expenses in the financial statements. The evidence shows that Realco had to pay the full amount of the repairs and that there was no contra charge against the railroads leasing the equipment.

In addition, there was an excess liability for equalization allowances in the amount of $37,5[illegible].00. Equalization payments

were basically rebates, which Realco granted to certain railroads as an incentive to sign up for a long term leasing program at a lower rate than the normal daily interchange rate. The financial statements reflect an accrual for equalization in the amount of $123,604.50. The total amount of equalization actually granted was $461,368.50, or an excess of $337,764.00 over the allowance. However, as the defendants themselves have recognized, this excess figure must be adjusted downward to reflect increased revenues. Realco's obligation to pay so much more in rebates than had actually been set aside could only mean that it had underestimated the related revenues which it was generating. Thus the accountants adjusted upward both its estimated revenue and the allowance for equalization by $300,255.00. However, this left it $37,508.00 short of the amount actually paid for equalization generated during the period prior to June 30, 1968. The defendants should recover this sum of $37,508.00 for the breach of the warranty in paragraph 4(c).[10/]

Defendants have also claimed that there were non-existent physical assets carried on the financial statements in the amount of $135,107.00 and that they should recover this amount for the

breach of the warranty of correctness of the financials, set forth in paragraph 4(c). However, Mr. Pluemer admitted that the financials were true and correct, notwithstanding this variance. It appears that generally accepted accounting principles were consistently applied by Peat, Marwick, Mitchell & Co. in preparing the financials. I find that the balance sheet was substantially true and correct as warranted and that a mistake of $135,107.00 in computing assets with a total value of $34,000,000.00 is de minimis and does not constitute a breach of the warranty in paragraph 4(c).

Unlike the warranty in ¶4(f) relating to receivables, which I have held should be construed liberally in favor of the purchaser, the warranty of correctness is merely a representation that the figures in the financial statements were arrived at through the use of generally accepted accounting principles. The purpose of using such principles is to obtain a clear and accurate picture of the position and performance of the business. Accomplishment of that purpose does not entail precise measurement down to the last penny. To require such would be to impose a burdensome standard of liability which the parties did not contemplate when they drafted the language in paragraph ¶4(c), so different in form

from the warranty in ¶4(f).

Defendants' damages for uncollectible accounts receivable and excess liabilities (equalization and trailer repairs) amounts to $177,472.00. The Purchase Agreement did, however, contain a provision which arguably limits the buyer's recovery for breach. Paragraph 8 in relevant part reads as follows:

> "8. Indemnification. Seller further agrees to indemnify and hold Buyer harmless from any and against all liability, loss or expense in excess of an aggregate of $50,000 arising out of any misrepresentations, breaches of warranties or failure to fulfill any covenants of Seller under this Agreement or arising out of any misrepresentation or material omission from any certificate, opinion or other instrument furnished to Buyer by Seller or Realco under this Agreement. Seller will reimburse Buyer on demand for any payments by Buyer with respect to any liability, obligation or claim to which the foregoing indemnity relates, provided Buyer has notified Seller in writing promptly upon the assertion of any such claim or demand by others and has afforded Seller the opportunity to defend against any such claim or demand."

REA contends that this clause applies to the present situation involving breaches of warranties and thus that Interway must bear the first $50,000.00 of losses. Defendants claim that the

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nature of an indemnity is reimbursement for losses arising out of claims asserted by third parties, and that since no such third party claims are involved here, the clause should be inapplicable.

I decline to read the clause as narrowly as the defendants suggest. While the clause is somewhat ambiguous, I conclude that a fair construction would make it applicable both to third party claims and disputes between the Buyer and Seller arising out of breach of warranty as therein specifically provided. Although the clause contains extensive provisions of indemnity, relevant only to third party situations, it also provides for "holding harmless" from losses, like those asserted in the counterclaim, arising out of any breaches of the warranties in ¶4. The Court finds from all of the evidence, and relying on the general business context of the agreement, that ¶8 is a loss deductible provision whose purpose was to prevent litigation over trivial amounts in a $32.4 million cash transaction. Accordingly, I find that the defendants must bear the first $50,000.00 of their damages proved under the counterclaim.

The defendant Interway is entitled to judgment on the

counterclaims in the sum of $127,472.00. I decline as a matter of discretion to grant pre-judgment interest. Defendants waited almost three years to give notice of these claims, which in large measure appeared in the audit which was conducted immediately following the original transaction.

On February 18, 1975, while this action was pending before me, plaintiff filed a petition in this Court pursuant to Chapter XI, §322 of the Bankruptcy Act. Pursuant to Rule 11-44 of the Rules of Bankruptcy Procedure, Bankrutpcy Judge Galgay entered an order on February 18, 1975 specifically staying continuation of all pending court proceedings, including the counterclaim of defendant Interway in this action. On February 26, 1975 Bankrutpcy Judge Galgay modified his original order so as to permit Interway to prosecute its counterclaim. However, Judge Galgay's order, as so modified, enjoins Interway from executing upon or seeking to enforce any judgment which may be entered in its favor in this action, unless first so authorized by the Bankruptcy Court.

On November 6, 1975 the Chapter XI petition was dismissed and REA was adjudicated a bankrupt. On November 7, 1975 Bankruptcy

Judge Galgay entered another order staying REA's creditors from enforcing any judgment against the bankrupt.

Accordingly, the judgment to be entered herein shall provide that no execution or levy may be made upon any of REA's property unless and until specifically authorized by the Bankruptcy Judge having jurisdiction over REA's affairs.

The foregoing, together with the stipulated facts not inconsistent therewith set forth in the Pre-Trial Order dated February 3, 1975, and the additional Stipulation of Facts also dated February 3, 1975 together constitute the Findings of Fact and Conclusions of Law pursuant to Rule 52, F.R.Civ.P.

Settle judgment on notice to counsel appearing in this action, and also on notice to the trustee in bankruptcy of REA, or his attorney. No costs.

Dated: New York, New York
January 20, 1976

CHARLES L. BRIEANT

CHARLES L. BRIEANT
U. S. D. J.

F O O T N O T E S

1. Prior to May 1971, Interway was known as Integrated Container Service Industries Corporation ("ICSI"). As used in this opinion, Interway refers to the parent corporation both during and after the time it was known as ICSI.

2. The full name of Realco is now Realco Services Incorporated.

3. As used herein ICS refers to the particular operating corporation which was conducting business during the time period suggested by the context.

4. ICS justifies its projection that a doubling of its equipment in use in 1969 would result in a doubling of net earnings by pointing to the historical growth pattern of the corporation. However, this proposition would appear contrary to elementary economic theory as well as common sense. First, there is no reason to assume without evidence that a historic growth pattern will continue uninterruptedly into the future upon an accellerated curve. As a small company gets larger, it becomes more and more difficult for it to sustain its growth rate. Furthermore, ICS had enjoyed a

utilization rate of almost 100% on its equipment from its origin until the Fall of 1968. It could only expect to double its gross earnings if it could maintain this 100% rate even after doubling its revenue equipment. At some point it is obvious that market demand would simply be unable to absorb the new equipment. Either the utilization rate would decline or ICS would be forced to cut its rates. In either case gross earnings would not grow in the same proportion as equipment in use.

Secondly, and perhaps more importantly, it is overly simplistic to assume that net earnings and either gross revenues or the amount of equipment in use are inexorably linked together so that doubling one will automatically double the other. On one hand, as a business like ICS grows, it may experience economies of scale. Such economies of scale are cost savings which a firm enjoys within a certain range of gross rentals by being able to exploit more fully its developed techniques for marketing and performing the service it provides for customers. Such cost savings may allow a larger firm to earn greater profit on each rental unit than the smaller firm. On the other hand, a point will

be reached in any company's growth, where its unit costs will begin to rise again. Greater size often means new unexpected inefficiencies and higher fixed costs. Management may become more and more insulated from the realities of the sales and service effort and develop unrealistic expectations. Corporate bureaucracies become unwieldy and failures of communication occur with increasing frequency. All of these factors help force up costs per unit as the firm expands beyond an efficient size. The point is, of course, that due to these inevitable technological and managerial inefficiencies net earnings will not grow at the same pace as output and may in fact begin to decline. See Areeda, Antitrust Analysis, ¶125, at p.27 (2d ed. 1974).

5. For a brief history of REA and its financial difficulties see the opinion of Judge Metzner in REA Express, Inc. v. Alabama Great Southern Railroad Co., 343 F.Supp. 851, 853-55 (S.D.N.Y. 1972), aff'd. 412 U.S. 934 (1973).

6. REA had an extensive history of losses and survived only through subsidies provided by the railroads which needed the services which it provided. Indeed the very fact that the

railroads were in a position to dominate REA made it an unattractive investment from the standpoint of financial institutions and the general public. McKinsey advised that unless and until REA was freed from railroad control, efforts to revive the company would be in vain. This advice was one of the prime reasons for the formation of the voting trust in June 1968.

7. On June 10, 1968, the railroads which owned the outstanding stock of REA had placed their holdings in a voting trust and had vested the power to vote the stock in three trustees, none of whom had previously been associated with REA. These trustees, along with Mr. William Taylor, the former President of REA, constituted the Board of Directors of REA during the relevant period, with Taylor serving as Chairman.

8. Robert Johnson had been Chairman and Chief Executive Officeroof Ingersoll-Rand Corporation, which supplies capital goods to the railroad industry, but was not itself in the transportation business. Ray Jordan was the President of J. C. Penney & Co., and Robert Fuller was Senior Vice President of the First National City Bank.

9. McCurdy did go on to state that Equitable would give the necessary approval for the conversion of the stock at the time the registration became effective. However, it is obviously impractical to proceed with the difficult and expensive process of registering common stock (which is to be issued only upon the actual exercise of the conversion privilege) upon the mere oral promise of the lender controlling the holder of record of the preferred that he will convert at the proper time. In any event, there is no evidence that Equitable had any direct communication with defendants on this subject.

10. See testimony of Pluemer, (Transcript pp. 293-304) for a more complete explanation of equalization.

Notice of Settlement

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

- x

REA EXPRESS, INC.,

Plaintiff,

-against-

INTERWAY CORPORATION, INTEGRATED CONTAINER SERVICE, INC.,

Defendants.

73 Civ. 560 (CLB)

NOTICE OF SETTLEMENT

- x

S I R S :

PLEASE TAKE NOTICE that a judgment, of which the within is a copy, will be presented for settlement and signature to Hon. Charles L. Brieant of this Court on the 30th day of January, 1976 at 10:00 A.M. in Room 36 of the United States Court House, Foley Square, New York, New York.

Dated: New York, New York

January 23, 1976

Yours, etc.,

WINTHROP, STIMSON, PUTNAM & ROBERTS
Attorneys for Defendants
Office & P. O.-Address
40 Wall Street
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(212) 943-0700

To: ARTHUR M. WISEHART, Esq.
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REA Express, Inc.

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60 East 56th Street
New York, New York 10022

Attorneys for Trustee in Bankruptcy
of REA Express, Inc.

Form of Judgment

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

- x

REA EXPRESS, INC.,

Plaintiff,

-against-

INTERWAY CORPORATION, INTEGRATED CONTAINER SERVICE, INC.,

Defendants.

- x

73 Civ. 560 (CLB)

JUDGMENT

This action having come on for trial on March 3, 4 and 5, 1975 before Hon. Charles L. Brieant of this Court, sitting without a jury, and the issues having been duly tried, and the Court having rendered its findings and conclusions by an opinion filed on January 20, 1976, it is hereby

ORDERED, ADJUDGED AND DECREED that plaintiff REA Express, Inc. take nothing in this action, and that its amended and supplemental complaint be dismissed on the merits; and it is further

ORDERED, ADJUDGED AND DECREED that defendant Interway Corporation recover of plaintiff REA Express, Inc. the sum of One Hundred Twenty Seven Thousand Four Hundred and Seventy-Two Dollars ($127,472) on its counterclaims asserted herein, together with interest from the date of this judgment until paid; and it is further

ORDERED, ADJUDGED AND DECREED that no costs shall be awarded herein; and it is further

ORDERED, ADJUDGED AND DECREED that defendant Interway Corporation is hereby barred from executing or levying upon, or otherwise seeking to enforce, the judgment on its counterclaims hereby rendered unless and until specifically authorized by the

Form of Judgment

Bankruptcy Judge having jurisdiction over the affairs of REA Express, Inc. in a bankruptcy proceeding pending in this Court bearing Index No. 75 Bkcy. 253.

Dated: New York, New York

s/ January 30, 1976

s/ Charles L Brieant
United States District Judge

JUDGMENT ENTERED this 30th day

of January, 1976

_____
Clerk

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

REA EXPRESS, INC.,	:	
Plaintiff	:	73 CIV. 560 (CLB)
v.	:	
INTERWAY CORPORATION, INTEGRATED CONTAINER SERVICE, INC.,	:	
Defendants	:	

NOTICE OF APPEAL

Notice is hereby given that REA Express, Inc., plaintiff above named, hereby appeals to the United States Court of Appeals for the Second Circuit from the final judgment entered in this action on the 30th day of January, 1976.

Franklin Poul
Judith R. Cohn
12th Floor Packard Building
Philadelphia, Pennsylvania 19102

OF COUNSEL:

WOLF, BLOCK, SCHORR and SOLIS-COHEN

Arthur M. Wisehart
219 East 42nd Street
New York, New York 10017

WISEHART AND KOCH

Attorneys for Plaintiff
REA Express, Inc.

Notice of Cross-Appeal

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

REA EXPRESS, INC., Plaintiff,	:	
-against-	:	73 CIV. 560 (CLB)
INTERWAY CORPORATION, INTERWAY CONTAINER SERVICE, INC., Defendants.	:	

NOTICE OF CROSS-APPEAL

Notice is hereby given that Interway Corporation ("Interway"), a defendant above named, hereby cross-appeals to the United States Court of Appeals for the Second Circuit from the final judgment entered in this action on the 30th day of January, 1976, insofar as said judgment fails to award interest to Interway for the period from November 1, 1968 to January 30, 1976 on the sum of $127,472 awarded on the counterclaims asserted by Interway herein.

Dated: New York, New York
February 27, 1976

Yours, etc.,

WINTHROP, STIMSON, PUTNAM & ROBERTS

By Stephen A. Weiss
A Member of the Firm

Attorneys for Defendant Interway Corporation
Office and Post Office Address
40 Wall Street
New York, New York 10005
Tel. No. (212) 943-0700

Notice of Cross-Appeal

TO: Arthur M. Wisehart, Esq.
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Attorneys for Trustee in Bankruptcy
of REA Express, Inc.

EXCERPTS FROM TRIAL TRANSCRIPT

PAGE 16

MR. WEINER: I am willing to stipulate that the memorandum in question does set forth the position conveyed by Equitable to REA.

THE COURT: Will that satisfy the problem, Mr. Poul?

PAGE 17

MR. POUL: Yes, your Honor. That is Joint Exhibit 242-A, for the record.

MR. WEINER: This stipulation does not include a concession that that position was in turn conveyed by REA to Interway but since the witness would not have any knowledge about that, I don't think that reservation would be material.

THE COURT: Perhaps you ought to during the recess write out a stipulation giving the name of this person and what he would testify to if called and that might obviate the problem of that particular witness not being here.

MR. POUL: I am willing to accept Mr. Weiner's stipulation as he has already presented it on the record.

THE COURT: It is so stipulated.

EXCERPTS FROM TRIAL TRANSCRIPT, Page 232

MR. WEINER: Counsel here stipulate that if Mr. Irving Jenkins were called as a witness, he would testify that he spoke with Mr. Kenny and Mr. Goldman of Interway Corporation and gave them the substance of the second paragraph of Joint Exhibit ~~345~~ 242. Mr. Kenny if called as a witness would testify that in response to this message from Mr. Jenkins, he told Mr. Jenkins to get the consent of the registered holder of the stock in writing.

Have I correctly stated that stipulation?

MR. POUL: That is correct.

THE COURT: In further responses given by him?

MR. WEINER: That is correct, your Honor.

Excerpt from Deposition of Peer Petersen

MR. WEINER: Off the record.

(Discussion off the record.)

Q Is it a fact that in 1971 Interway took the position that REA would have to exercise its option before it could request registration?

A May I see that latest exhibit?

Q Yes.

A Apparently, yes.

Q Did Interway have any reason for taking that position?

A Again, Mr. Poul, I don't remember that Interway took that position until I saw this particular letter here today. I don't remember what reasons were had at that particular time. I was not that much involved in that transaction. I was consulted, generally, but I was not acting in terms of contacting the people at REA one way or the other.

I am not going to make up reasons that I don't remember.

Q Do you know of any facts that developed between 1969 and 1971 to cause Interway to irsist upon preliminary conversion whereas in 1969 it had not done so?

A No.

Q Do you recall any discussions with any

representatives of Interway about why you were changing the position that had been taken with respect to requests for registration in 1969?

A No, I don't.

Q Did you take part in any discussions with Mr. Gintel in the summer of 1971 in an attempt to resolve the dispute Interway was having with REA over the question of registration?

A I am sure I did not.

Q Were you conscious that Gintel was having discussions with them?

A Mr. Gintel has frequent discussions with some of our people in New York. I don't have any recollection.

Q Did Interway in 1971 ever consult with outside counsel with respect to the validity of the objection it was raising to REA's request for registration?

MR. WEINER: I believe that question was asked.

MR. POUL: It was asked in a narrower time frame.

A The company may have but I don't recall specifically that we did.

Q If you did, would there be something in your files about that?

A Not my files.

Q Whose files would it be in?

A I assume in Dennis Kenny's files.

Q If you received a formal or informal opinion, wouldn't you have gotten a copy of it?

MR. WEINER: That is calling for speculation.

MR. POUL: I am talking about what's in the files that are kept in the office of the witness.

MR. WEINER: I don't mind your asking him if he recalls having seen such an opinion or that such an opinion is in his files.

MR. POUL: That is not my point. If Mr. Kenny or someone else sent you a copy of a letter on the subject, it would be in your files?

A Yes, indeed, it would.

Q Do you know that there is no such letter of opinion?

A I don't remember there being such a letter of opinion.

Q But you can't be sure without looking at the files?

A Correct.

Q Without looking or presenting detailed

correspondence, do you have any recollection of the fact that REA had requested a "no action" letter from the SEC in 1971 in this connection?

A It wouldn't surprise me if they did.

A "no action letter"?

Q Pardon me?

A "No action" in terms of what?

Q As an alternative to registration.

A It seems to me I do have some recollection, but is very vague.

Q Did you take part in a preliminary decision on the part of Interway that if REA got the "no action" letter it would honor the request for registration?

A I am sure you are not asking this question in a vacuum and I am sure if that was the case, I would have approved of it, but I don't remember it.

Q Is it clear to you, not just a matter of recollection, that you had no connection with the application to the SEC?

A For the "no action" letter?

Q Yes.

A I don't remember having anything to do with it.

Q You never saw a copy of the request?

A It was a request by REA, is that what you are

talking about?

Q Yes.

A I don't think I did, no.

Q Did there come a time that you believed that REA had withdrawn its request for registration?

A You mean that they submitted a request that they were withdrawing their--I don't remember such a request. I don't remember any specific request for withdrawal.

Q I am asking you whether you believe or did there come a time you believed that REA had withdrawn its request for registration?

A I don't recall any information to the effect that we had had any communications with REA in terms of withdrawal of their request. I don't recall that.

Q I think you have answered my question, but there are some extra words in it.

A I don't remember hearing that REA had requested a withdrawal of their alleged rights of registration.

Q Therefore, up to this time, you have no reason to believe they did withdraw it; is that correct?

A Again, I don't remember hearing of any communication from REA to that effect; that they didn't want their stock registered.

Q Without saying there was anything other than

a communication from REA that would do the trick, did you ever hear anything that made you think the request had been withdrawn?

A I have a recollection that a position was taken that the request was no longer effective or continuing, but I don't recall the basis for it.

Q You mean the position taken by your counsel?

A By our company, yes. I am sure if I see the correspondence, it would refresh my recollection.

Q When was the position taken?

A I don't remember.

Q Earlier than this lawsuit?

A I don't remember.

Q Do you have any present objection, as an officer and director of Interway, to registering or proceeding to register the common stock into which the REA preference stock is convertible?

MR. WEINER: May I have the question back?

(The record was read.)

A I think in view of the litigation pending between the parties that I would wish to consult with counsel before I could respond to that question.

Q I am not sure if I understand you.

You mean you want to talk to Mr. Weiner before

you tell me what your objection is?

A I would want to reexamine the status of the legal relationships between the parties and reexamine the agreements.

Q I am not asking you for your view as to whether you have a legal obligation or what the effect that would have on the lawsuit or anything of that sort.

I am only asking whether you have any objection, from an economic, corporate or business point of view.

MR. WEINER: As opposed to any legal consideration?

MR. POUL: Exactly.

A I don't think so. Not that I can think of, no.

Q Do you know whether any of your colleagues do?

By "colleagues" I am referring to other members of the board.

A I don't know that they do.

Q There has been some reference to projections made in 1967 and 1968. Who prepared projections for Interway in those years?

A Mr. Needleman.

Q Anyone else, to your knowledge?

A Well, his staff.

Q All projections made in the period of 1967 and

135a
Exhibit JE 78

JE 78

Integrated Container Service, Inc.

230 PARK AVENUE • NEW YORK, N. Y. 10017

PHONE (212) 684-5132 • CABLE INTCONSERV NEW YORK • TELEX-12-6040

September 23, 1968

Mr. Ray H. Jordan, President
Railway Express Agency, Incorporated
219 East 42nd Street
New York, New York 10017

Dear Mr. Jordan:

Pursuant to your invitation of August 16, 1968, and a Resolution of the Board of Directors of Integrated Container Service, Inc., we submit herewith two alternative offers of ICS to purchase in one case 51% of the issued and outstanding stock of REA Leasing Corporation, and in the other not less than 51% and up to 100% of such stock, and in both cases to purchase the subordinated indebtedness of REALCO to REA in the principal amount of $2,400,000.

We wish at the outset to describe briefly our Company. ICS is in the business of leasing intermodal cargo containers through an international pool of carriers. Its leasing arrangements and operations are in many ways similar to REALCO's. ICS's containers and pooling services, however, are designed for all forms of surface transportation on a worldwide scale as contrasted with REALCO's U.S. railroad-piggyback orientated equipment and services. A prospectus (Exhibit "A") prepared for the recent and first public sale of ICS common stock is enclosed. It details ICS's origins and growth. Also enclosed is the six months report to shareholders (Exhibit "B") which provides the Company's most recently published financial information.

ICS has established a leading position in international container leasing and pooling. Recognition of this fact is evidenced by the following quotation from the September 14, 1968, issue of the British publication, The Economist, which issue was devoted to a survey of the international container business:

"But the biggest prize for the bankers wo ld be a world wide container owning and leasing company which buys and leases containers and rents them to users around the world, taking the responsibility of passing its containers on from one user to the next. But it looks as if the cream of that cake has already been taken by Integrated Container Service, Inc, an A nerican con pany that went public this year and is now turning itself into a truly international organisation with locally established branch companies and offices around the world."

ICS is interested in REALCO because it believes that their respective operations are complementary. A union of the two companies would achieve the objective of creating a worldwide intermodal container and trailer leasing and pooling business. This combination will benefit REA and its shareholders as well as ICS. ICS's worldwide pool of containers will enable REALCO to extend the scope of its service to U.S. railroads. Similarly, the inclusion of REALCO's equipment in the activities of the ICS pool will increase the ability of U.S. land carriers to participate in the international movement of freight.

The business of ICS has expanded rapidly. It is expected that this growth will continue. Based upon the current demand for the Company's equipment and services, ICS anticipates that equipment in use in its pool will at least double in 1969. ICS presently has an $11,000,000 line of credit with a consortium of banking institutions headed by the Pittsburgh National Bank, including The First Pennsylvania Banking and Trust Company, Bank of America National Trust & Savings Association, The National Shawmut Bank of Boston, and the Schroder Trust Company as participants. It is currently negotiating with the Pittsburgh National Bank for an additional $25,000,000 line of credit, for additional equipment purchases, which will provide ICS with a total of over $36,000,000 of bank credit. In addition, the Company has and will continue to have lines of credit with foreign manufacturers of container equipment.

ICS submits the following two offers:

OFFER NO. 1

ICS offers to purchase 51% of the issued and outstanding shares of REALCO, and the $2,400,000 subordinated obligation of REALCO to REA for a total cash consideration of $32,400,000.

OFFER NO. 2

ICS offers to purchase 51% of the issued and outstanding shares of REALCO, and the $2,400,000 subordinated obligation of REALCO to REA for a total cash consideration of $32,400,000, and further offers to purchase all or any portion of the remaining 49% of the issued and outstanding shares of REALCO, and as consideration therefor, will issue to REA $40,000,000, or such lesser proportionate amount in the event of the purchase of less than all of the remaining shares, in convertible preference shares of a holding company ("ICS Holding Company") to be incorporated for the purpose of holding 100% of the issued and outstanding shares of ICS and all of the shares of REALCO to be purchased hereunder.

Description of Proposed Convertible Preference Stock

1. Preference: In the event of liquidation, preferred over Common Stock at the rate of $100.00 per share. The shares will be assigned a nominal par value.

2. Redemption: Redeemable in whole or in part at any time after six months at 105% of the liquidating value of the shares.

3. Conversion Price ($65 to $75): Convertible in whole or in part into Common Stock at a price equal to the average mean between the closing bid and ask price as reported and confirmed by the National Quotation Bureau for the five trading days immediately preceding the closing date of the acquisition of REALCO stock, but in no event less than $65.00 per share, nor more than $75.00 per share. Assuming the issuance of the full $40,000,000 of Preference Shares, the conversion thereof at $65.00 per share would result in the issuance to REALCO shareholders of 615,384 common shares and 533,333 common shares at $75.00 per share.

4. Dividend: In each of the first three 12-month periods after issue, a dividend on the Preference Stock will be paid in kind equal to 5% per annum of the number of Preference Shares originally issued.

5. Conversion: The Preference Stock will be convertible in whole or in part into the Common Stock of the ICS Holding Company only pursuant to a public sale of such shares by REA or any subsequent holder thereof.

6. Voting Rights: Each Preference Share shall be entitled to 1/10th of one vote.

7. Registration Rights: Upon 90 days notice by the holders of 30% or more of the Preference Stock, ICS Holding Company will convert such shares into Common Stock and will register an offering of such Common Stock, but not more than twice, at the Company's expense. At the request of any preference shareholder, ICS Holding Company will convert Preference Stock into Common Stock for inclusion in any registration statement it may file.

The foregoing alternative offers are subject to the following terms and conditions:

1. Creditors' Arrangements: ICS will enter into an undertaking with respect to REALCO's creditors' agreements as described in your letter of August 16, 1968, providing for the continuance of such loans until March 31, 1969, and containing the same obligations as those of REA, and will further agree to cause REALCO to consent to the substitution of ICS for REA under the default provisions of such loan agreements.

2. Warranties and Covenants: In addition to the warranties REA has agreed to make as set forth in paragraph 3 of your invitation of August 16, 1968, ICS requests REA to make the following warranties and covenants:

(a) That none of the accounts and notes receivable of REALCO is subject to counterclaims or set-offs and all of such accounts and notes receivable are good and collectible at the aggregate recorded amounts thereof, less the amounts of the applicable reserves for doubtful accounts, overcharge, noncollectible items and for allowances and discounts.

(b) That except to the extent reflected or reserved against in the consolidated balance sheet at June 30, 1968, REALCO as of the date thereof, had no liabilities or obligations of a nature customarily reflected in a corporate balance sheet prepared in accordance with generally accepted accounting principles, including, without limitation, any tax liabilities (i) incurred in respect to REALCO's income for any period prior to the close of business on June 30, 1968, or (ii) arising out of transactions entered into or any state of facts existing prior thereto. REALCO has no liabilities of any nature contingent or otherwise or any amount not fully reflected or reserved against in its consolidated balance sheet at June 30, 1968, except for liabilities incurred since June 30, 1968, in the ordinary course of business.

(c) That REALCO has continued to conduct its business, maintain its properties, and keep its books and records in its usual manner since June 30, 1968.

(d) That REALCO is not a party to any pending or threatened litigation which, if adversely determined, would materially and adversely affect the business, operations or properties of REALCO.

(e) That REALCO has not incurred since June 30, 1968, any extraordinary losses or incurred or become liable for any obligations or liabilities except current liabilities incurred in the ordinary and usual course of business or made any extraordinary expenditures other than for additions and improvements to existing facilities and equipment.

(f) That REA covenants and agrees that for a period of five years it will not directly or indirectly engage in the business of leasing trailers or containers to others on a per diem, or on a short or long term basis, or provide a "pooling" arrangement to freight carriers for the interchange among carriers of trailers or containers or engage in any business or aspect thereof which would be competitive with the per diem and short and long term container or trailer leasing business and interchange services of ICS or be competitive with the present business of REALCO.

3. Indemnification and Hold Harmless: REA shall indemnify and hold ICS harmless against and in respect of losses in excess of an aggregate of $50,000 by reason of:

(a) Any and all damage or deficiency resulting from any misrepresentation, breach of warranty or failure to fulfill any covenant on the part of REA or from any misrepresentation in or material omission from any certificate, opinion or other instrument furnished or to be furnished to ICS by REA or REALCO.

(b) Any and all actions, suits, proceedings, demands, assessments, judgments, costs and legal and other expenses incident to any of the foregoing in 3(a) above.

REA will reimburse ICS on demand for any payments by ICS with respect to any liability, obligation or claim to which the foregoing indemnity relates, provided ICS has notified REA in writing promptly upon the assertion of any such claim or demand by others and has afforded REA the opportunity to defend against any such claim or demand. To secure the foregoing right of reimbursement, REA, at the time of closing, will

deposit with a mutually acceptable escrow agent for a period of two years, 10% of the issued and outstanding stock of REALCO Common Stock, provided that in the event REA accepts ICS Offer No. 2, then REA shall deposit with such escrow agent the proportionate amount of securities received from ICS for such 10% of REALCO Common Stock. If a claim to which the foregoing indemnity relates has been asserted but no payment has been made by REA prior to the expiration of the aforesaid escrow period, then ICS shall be entitled to have the securities deposited in escrow to be held by the escrow agent until final determination of such claim. If such claim has not been resolved within 12 months subsequent to the expiration of the escrow period, the escrow agent shall be authorized to sell all or such portion of said shares as is required to generate proceeds sufficient to satisfy said claim, and the escrow agent shall then pay said proceeds to claimant or I.C.S., as the case may be.

Although your invitation of August 16, 1968, suggests that proof of the availability of funds to ICS to pay the offered purchase price is required only upon the request of REA, ICS wishes to confirm the availability to it of such funds on or before the closing date. We have, therefore, attached as Exhibits "C" and "D", respectively, the following:

1. Letter of Commitment dated September 11, 1968, from the Continental Illinois National Bank and Trust Company of Chicago, committing that bank to furnish $20,000,000 to ICS for purposes of acquiring 51% or more of REALCO stock.

2. Letter of Lehman Brothers dated September 20, 1968, stating that it has received commitments to purchase $17,500,000 of subordinated convertible notes to be issued by the ICS Holding Company, which commitments are conditioned upon the acquisition by ICS Holding Company of 51% or more of REALCO stock.

It should be noted that the commitment letter of the Continental Illinois National Bank and Trust Company of Chicago gives practical assurance of the acceptability of ICS as a substitute for REA under the REALCO revolving credit arrangements with the same bank.

In order to assist REA in making an evaluation of the financial impact or value of the proposed transaction, ICS has prepared pro forma income statements for the current and next fiscal years of ICS and REALCO,

reflecting the consequences of the Company's two offers.

Certain assumptions were made for purposes of preparing these exhibits. Based on its forecasts, its experience and evaluation of the market available to it, ICS anticipates net earnings after taxes in excess of $2,000,000 for the current calendar year and in excess of $4,000,000 in 1969. REALCO's earnings are set forth on the assumptions that sales from fiscal 1969 will increase 20%, and that the company will realize earnings after taxes equal to 18% of sales. We have assumed similar growth for the next fiscal year.

In compliance with REA's invitation, ICS hereby represents, covenants and warrants that the purchase of REALCO's shares under either Offer No. 1 or Offer No. 2 and the purchase of the subordinated debt is for its own account and not with a view to or for sale in connection with any distribution thereof. This offer is unconditional and irrevocable through October 15, 1968, and the terms and conditions of your invitation are hereby accepted and made a part of our offers.

ICS stands ready to furnish such additional information, clarification or elaboration of its proposals as may be desired by REA. Without in any way qualifying the irrevocability or unconditional nature of these offers, we wish to advise that ICS is prepared, within the basic framework of the offers herewith submitted, to explore with REA representatives any variations thereof that may be more suitable to REA or that may conform more readily to REA's needs.

Very truly yours,

INTEGRATED CONTAINER SERVICE, INC.

Michael C. Kluge, President

MCK:cap
encls.

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Exhibit JE 78

CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO

231 SOUTH LASALLE STREET CHICAGO, ILLINOIS 60690

September 11, 1968

EUGENE HOLLAND, JR.
VICE PRESIDENT
TELEPHONE: 828-2320

Mr. Peer Pedersen
Pedersen and Houpt
135 South LaSalle Street
Chicago, Illinois 60603

Dear Peer:

This will confirm our understanding that our bank has agreed to head up a $20,000,000 bank credit to help finance the proposed acquisition of 51% or more of the stock of REA Leasing Company.

The borrower is to be a new holding company which will own all of the stock of Integrated Container Service, Inc. and will also own the stock of Realco which is to be purchased. Our loan will be secured by a pledge of the ICS stock and the Realco stock.

The loan will run for a term of one year and will be at 8% interest. There will also be a commitment fee of 1/2 of 1% between now and the time the loan is taken down.

Yours very truly

Eugene Holland

Vice President

EH:FG

Exhibit JE 78

Lehman Brothers

One William Street
New York, N.Y. 10004

September 20, 1968

Mr. Michael C. Kluge,
President
Integrated Container Service, Inc.
230 Park Avenue
New York, New York 10017

Dear Mr. Kluge:

We have received from institutional investors commitments to purchase $17,500,000 of subordinated convertible debentures to be issued by the ICS Holding Company, which commitments are conditioned upon the acquisition by ICS Holding Company of 51% or more of the common stock of REALCO.

Sincerely yours,

Lehman Brothers

By Sidney Kahn
Sidney Kahn,
Partner

Exhibit JE 78

I. C. S. OFFER No. 2.

I. C. S. HOLDING COMPANY

INTEGRATED CONTAINER SERVICE, INC.
REA LEASING CORPORATION, INC.

PRO FORMA COMBINED EARNINGS

—

The following Pro Forma Combined Earnings are predicated on the assumption that I.C.S. Holding Company will purchase from REA 100% of the Capital Stock of REALCO and $2,400,000 principal amount of Subordinated Indebtedness due REA by REALCO for, (1) a cash consideration of $32,400,000 and (2) $40,000,000 of Convertible Preference Stock. Although Offer No. 2 permits the purchase of less than 100% of the Realco stock, this table assume s acquisition of 100%.

BEFORE CONVERSION	1968 (A)			1969 (A)		
	I. C. S.	REALCO	COMBINED	I.C.S.	REALCO	COMBINED
Estimated earnings after taxes	$2,000,000(B)	$3,795,000(C)	$5,795,000	$4,000,000(B)	$4,554,000(C)	$8,554,000
Annual debt service - after income tax effect of 27% (D)						
$20,000,000 of senior notes at 8%			(1,168,000)			(1,168,000)
$17,500,000 4-1/2% convertible notes			(575,000)			(575,000)
			(1,743,000)			(1,743,000)
Estimated earnings - net			$4,052,000			$6,811,000
Common shares outstanding :						
I.C.S.	2,000,000			2,000,000		
$40,000,000 preferred stock converted at $75 per share (E)	533,333			533,333		
	2,533,333			2,533,333		
Estimated earnings per common share			$1.60			$2.69
AFTER CONVERSION AND REFINANCING						
Estimated earnings after taxes			$5,795,000			$8,554,000
Common shares outstanding :						
I. C. S.	2,000,000			2,000,000		
$40,000,000 preferred stock converted at $75 per share	533,333			533,333		
Refinancing of $20,000,000 of senior notes (F)	266,666			266,666		
Conversion of $17,500,000 of convertible notes at $55 per share (G)	318,181			318,181		
	3,118,180			3,118,180		
Estimated earnings per common share			$1.86			$2.74

(A) Consolidates operations of I.C.S. and all subsidiaries, and Realco and all subsidiaries.

(B) For the years ending December 31, 1968 and 1969, respectively.

(C) For the twelve months ending June 30, 1969 and 1970, respectively.

(D) Assumes availability of investment tax credits equal to 50% of tax liability.

(E) Assumes preferred stock will be, for purposes of earnings per share calculations, fully residual.

(F) Assumes refinancing of $20,000,000 of senior notes out of proceeds of sale of common stock at $75 per share.

(G) Conversion price of 4-1/2% convertible notes to be issued.

Exhibit JE 78

I. C. S. OFFER No. 1.

I. C. S. HOLDING COMPANY

INTEGRATED CONTAINER SERVICE, INC.
REA LEASING CORPORATION, INC.

PRO FORMA COMBINED EARNINGS

The following Pro Forma Combined Earnings are predicated on the assumption that I.C.S. Holding Company will purchase from REA 51% of the Capital Stock of REALCO, and $2,400,000 principal amount of Subordinated Indebtedness due REA by REALCO for a cash consideration of $32,400,000.

	1968 (A)			1969 (A)		
BEFORE CONVERSION	I.C.S.	REALCO	COMBINED	I.C.S.	REALCO	COMBINED
Estimated earnings after taxes	$2,000,000(B)	$3,795,000(C)	$5,795,000	$4,000,000(B)	$4,554,000(C)	$8,554,000
Less : REA's interest (49%)		(1,860,000)	(1,860,000)		(2,232,000)	(2,232,000)
	$2,000,000	$1,935,000	$3,935,000	$4,000,000	$2,322,000	$6,322,000
Annual debt service - after income tax effect of 27% (D)						
$20,000,000 senior notes at 8%			(1,168,000)			(1,168,000)
$17,500,000 4-1/2% convertible notes			(575,000)			(575,000)
			(1,743,000)			(1,743,000)
Estimated earnings - net			$2,192,000			$4,579,000
Estimated earnings per share based on 2,000,000 common shares			$1.10			$2.29
AFTER CONVERSION AND REFINANCING						
Estimated earnings after taxes and deducting REA's interest (49%)			$3,935,000			$6,322,000
Common shares outstanding :						
I.C.S.	2,000,000			2,000,000		
Refinancing of $20,000,000 of senior notes (E)	266,666			266,666		
Conversion of $17,500,000 of convertible notes at $55 per share (F)	318,181			318,181		
	2,584,847			2,584,847		
Estimated earnings per common share			$1.52			$2.45

(A) Consolidates operations of I.C.S. and all subsidiaries, and Realco and all subsidiaries.

(B) For the years ending December 31, 1968 and 1969, respectively.

(C) For the twelve months ending June 30, 1969 and 1970, respectively.

(D) Assumes availability of investment tax credits equal to 50% of tax liability.

(E) Assumes refinancing of $20,000,000 of senior notes out of proceeds of sale of common stock at $75 per share.

(F) Conversion price of 4-1/2% convertible notes to be issued.

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Exhibit JE 101

Joint Exhibit 101

October 4, 1968

EXHIBIT D
U. S. DIST. COURT
S. D. OF N. Y.

Mr. Ray H. Jordan, President
Railway Express Agency, Incorporated
219 East 42nd Street
New York, New York 10017

Dear Mr. Jordan:

This letter is in response to REA's request that ICS clarify a provision of the indemnification requirement of its offer as set forth commencing on page 5 of our letter of September 23, 1968, expressly confirm certain implied terms of its offer, and in addition, that it consider certain modifications to its proposals.

It is our understanding that a question has been raised as to the amount of REALCO stock, in the case of Offer No. 1, or in the case of Offer No. 2, the amount of ICS Holding Company's Preference Shares which ICS would require REA to deposit in escrow in order to secure its right of indemnification. It was intended that the 10% amount as stated, be applicable in the event either offer were accepted. In other words, with respect to Offer No. 1, REA is requested to deposit in escrow from the 49% of the REALCO stock retained by it, the number of shares of such stock which equals 10% of the total issued and outstanding shares of said corporation. Should REA accept Offer No. 2, it is requested to deposit in escrow, ICS Holding Company Preference Shares in an amount equal in value to 10% of the sum of the cash and the liquidation value of the Preference Shares received by it as consideration for the REALCO stock. For example, if, as proposed, ICS acquires all of the issued and outstanding shares of REALCO for a cash consideration of $30,000,000 and $40,000,000 of ICS Holding Company's Preference Shares, REA would be required to escrow that number of ICS Preference Shares having a value upon liquidation of $7,000,000. If REA should determine to accept ICS's offer to purchase less than all of the remaining 49% of REALCO stock, REA might then deposit either REALCO stock (10% of the total issued and outstanding shares of said corporation) or ICS Holding Company's Preference Shares having a liquidation value of $7,000,000.

PLF's Exh. 4 For Ident.
DATE 12-11-73 P. CHRISTY

BEST COPY AVAILABLE

In explanation of the foregoing, we suggest that in purchasing REALCO stock under either Offer No. 1 or Offer No. 2, ICS is exposed to certain risks from which it is entitled to be protected. Since these risks are basically the same in either event, ICS is willing to accept the same protection even though its investment is significantly greater in the case of Offer No. 2.

It is also our understanding that some concern has been expressed with respect to the possibility, in the event Offer No. 2 is accepted, that during the period prior to conversion by REA of ICS Holding Company's Preference Shares, REA's equity position in the Holding Company might be diluted through common stock splits, dividends, or other capital adjustments. Although not expressly stated in our offer, we wish to assure you that no such possibility of dilution was intended to be left open and that ICS would propose to include in the formal agreement incorporating the terms of its Offer No. 2 a provision as follows:

> "The conversion price established for the Preference Shares in the manner provided shall be proportionately adjusted for any increase or decrease in the total number of issued and outstanding shares of Common Stock of ICS Holding Company as of the closing date resulting from a split or consolidation of shares or any like capital adjustment, or the payment of any stock dividend, or any other increase or decrease in the number of shares of Common Stock of ICS Holding Company without receipt of fair market value therefor."

It was also intended that the Preference Shares participate equally on the basis of the number of shares of Common Stock into which the Preference Shares are then convertible, with the Common Stock of the Holding Company in any cash dividends that might be declared.

In addition to the foregoing clarifications, REA has requested that ICS consider certain modifications to its offer and the following represent those modifications which are acceptable to ICS,

1. ICS hereby amends the redemption provision with respect to the Preference Shares in Offer No. 2 by providing that after receipt from REA of a request to register an offering of Common Stock as provided in paragraph 7 and

until such registration is completed, ICS shall not have the right to redeem the Preference Shares.

2. "ICS hereby amends its Offer No. 2 by granting to REA the right to convert the Preference Shares into Common Stock for purposes of making sales thereof to the public pursuant to Rule 154 under the Federal Securities Act of 1933 as amended and further grants to REA the right to make private placements of the Preference Shares without restriction to financial institutions and to other purchasers, provided that with respect to the latter the number of shares sold to any single purchaser shall not exceed $3,000,000 in liquidation value of such Preference Shares."

not accepted see ltr. 7/10/69

3. ICS hereby amends its proposal by adding as an alternative offer the following:

> ICS offers to purchase 100% of the issued and outstanding shares of REALCO, the $2,400,000 subordinated obligation of REALCO to REA and the covenant of REA not to compete for a period of 10 years for a total cash consideration of $32,400,000 (of which amount $15,000,000 shall be allocated as consideration for the covenant not to compete) and the issuance to REA of $40,000,000 in Convertible Preference Shares of the ICS Holding Company. (The Preference Shares shall be the same as described under ICS's Offer No. 2 as set forth in our letter of September 23, 1968 and as amended by this letter.)

4. ICS hereby amends its Offer No. 2 as set forth on page 3 of our letter of September 23, 1968 by adding the following:

> "provided that if REA accepts the foregoing cash offer for 51% of the REALCO stock and the $2,400,000 subordinated obligation of REALCO to REA, the further offer of ICS to purchase all or part of the remaining 49% of the REALCO stock for the securities of the Holding Company on the terms stated, shall remain irrevocable until July 11, 1969, and may be exercised by delivery of written notice at any time prior thereto."

As was agreed at the meeting of ICS and REA representatives on October 4, 1968, it is understood that if the derivative tax problems can be successfully resolved ICS's offer to purchase the remaining 49% of its REALCO stock shall remain irrevocable until December 31, 1969 but ICS shall be given the option during the period from July 1 to July 31, 1969 to require REA's sale to it of the remaining 49% of the REALCO stock on the terms stated.

All other terms of Offer No. 2 shall remain the same except that the determinative date for the establishment of the conversion price within the stated minimum and maximum shall be the date of exercise by REA of its option to accept ICS's offer to purchase the remaining 49% of REALCO stock rather than the closing date of the cash purchase of 51% of the REALCO stock.

ICS will be pleased to provide any further clarification or elaboration of ICS's proposals which you may desire, and will give consideration to further modifications which may be suggested.

Very truly yours,

INTEGRATED CONTAINER SERVICE, INC.

M. C. Kluge

Michael C. Kluge, President

MCK/ot

Exhibit JE 107 [Conformed Copy]

Joint Exhibit 107
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

PURCHASE AGREEMENT dated as of October 11, 1968, between INTEGRATED CONTAINER SERVICE, INC., a Pennsylvania corporation (hereinafter called Buyer), and RAILWAY EXPRESS AGENCY, INCORPORATED, a Delaware corporation (hereinafter called Seller).

Seller desires to sell to Buyer, and Buyer desires to purchase from Seller, 51% of the issued and outstanding stock of REA Leasing Corporation, a Delaware corporation (hereinafter called Realco), consisting of 2,550 shares of Common Stock representing 51% of the outstanding shares of capital stock of Realco (hereinafter called the Shares), and $2,400,000 principal amount of 5-1/2% Notes due 1970-71 of Realco (hereinafter called the Subordinated Debt), all upon the terms and subject to the conditions hereinafter set forth. Accordingly, the parties hereto agree as follows:

1. Purchase and Sale. (a) On the Closing Date referred to below, and upon the terms and subject to the conditions set forth in this Agreement, Seller hereby agrees to sell, assign and transfer to Buyer, and Buyer hereby agrees to purchase and accept from Seller, the Shares and the Subordinated Debt, free and clear of all liens, pledges and encumbrances.

Def's ex 20 For Ident.
DATE 12-11-73 P. CHRISTIE

(b) On the Closing Date Seller will deliver to Buyer (i) a certificate representing the Shares, duly endorsed in blank for transfer, or with an appropriate stock power in blank attached, with all necessary state transfer tax stamps affixed or provided for, and (ii) the Subordinated Debt.

(c) The purchase price for the Shares shall be $30,000,000 and the purchase price for the Subordinated Debt shall be $2,400,000 plus accrued interest from October 1, 1968.

2. Payment of Purchase Price. On the Closing Date Buyer shall deliver to Seller a certified or bank cashier's check payable in New York Clearing House funds to Seller in the amount of $32,400,000 plus accrued interest on the Subordinated Debt from October 1, 1968. Buyer has delivered to Seller security satisfactory to Seller in an amount of $5,000,000, which shall be forfeited to Seller if Buyer defaults on its obligation to make payment of the purchase price on November 1, 1968. If Buyer has fulfilled its obligation to make payment of the purchase price on November 1, 1968, such security shall be returned to Buyer.

3. The Closing Date. The purchase and sale provided for in this Agreement shall take place at the offices of Seller in New York, New York, at 10:00 a.m., on November 1, 1968 (herein called the Closing Date).

4. Representations of Seller. Seller represents,

warrants and agrees as follows:

(a) Realco is a duly organized and validly existing corporation under the laws of the State of Delaware.

(b) Seller is the lawful owner of the Shares and of the Subordinated Debt and has, and at the Closing Date will have, full power and authority to sell and deliver the same to Buyer, free and clear of all liens and encumbrances.

(c) Seller has furnished to Buyer a true and correct copy of the audited consolidated balance sheet of Realco and subsidiaries, as of June 30, 1968, and the related statement of income and retained earnings for the year then ended, together with the related report of Peat, Marwick, Mitchell & Co., independent public accountants. Said financial statements are true and correct. Except to the extent reflected or reserved against in the consolidated balance sheet as of June 30, 1968, Realco, as of the date thereof, had no liabilities or obligations of a nature customarily reflected in a corporate balance sheet prepared in accordance with generally accepted accounting principles, including, without limitation, any tax liabilities (i) incurred in respect of Realco's income for any period prior to the close of business on June 30, 1968, or (ii) arising out of transactions entered into or any state of facts existing prior thereto. As of June 30, 1968, Realco had no liabilities of any nature contingent or otherwise not fully reflected or reserved against in its consolidated balance sheet as of June 30, 1968.

(d) There are no actions, suits or proceedings pending or threatened against Realco which, if adversely determined, would materially and adversely affect the business, operations or properties of Realco.

(e) Between June 30, 1968 and the Closing Date, Realco has not incurred and will not incur, any extraordinary losses or obligations or liabilities except current liabilities incurred in the ordinary and usual course of business and Realco has not made and will not make any extraordinary expenditures other than for additions and improvements to existing facilities and equipment. Between June 30, 1968 and the Closing Date, Realco has and will conduct its business, maintain its properties and keep its books and records in the usual manner.

(f) None of the accounts and notes receivable of Realco reflected in the consolidated balance sheet of Realco and subsidiaries as of June 30, 1968, are subject to counterclaims or set-offs and all of such accounts and notes receivable are (to the extent not collected since June 30, 1968) good and collectible at the aggregate recorded amounts thereof, less the amounts of the applicable reserves or allowances reflected in said consolidated balance sheet for doubtful accounts, overcharge, noncollectible items and for allowances and discounts.

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Exhibit JE 107

5. Conditions to Obligations of Buyer. The obligations of Buyer under this Agreement are, at the option of Buyer, subject to the conditions that:

(a) All the terms, covenants and conditions of this Agreement to be complied with and performed by Seller on or before the Closing Date shall have been fully complied with and performed.

(b) Buyer shall have received an opinion of counsel for Seller dated the Closing Date to the effect that:

(i) Realco is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware;

(ii) Realco has a duly authorized capital stock consisting of 25,000 shares of Common Stock, no par value, of which only 5,000 shares have been issued;

(iii) the Shares are validly issued, fully paid and non-assessable and the Seller has transferred good and marketable title thereto to the Buyer free and clear of all liens and encumbrances; and

(iv) this Agreement has been duly authorized, executed and delivered by or on behalf of Seller and is the legal, valid and binding obligation of Seller in accordance with its terms.

6. Conditions to Obligations of Seller. The

obligations of Seller under this Agreement are subject to the conditions that:

(a) All the terms, covenants and conditions of this Agreement to be complied with and performed by Buyer on or before the Closing Date shall have been fully complied with and performed.

(b) On the Closing Date, Seller shall have received an opinion of counsel for Buyer, to the effect that (i) Buyer is a corporation duly organized and validly existing in good standing under the laws of the state of its incorporation; (ii) the execution, delivery and performance of this Agreement by Buyer has been duly authorized by all requisite corporate action; and (iii) this Agreement has been duly executed and delivered by or on behalf of Buyer and constitutes a legal, valid and binding obligation of Buyer in accordance with its terms.

(c) Buyer shall have entered, or shall have used its best efforts to have entered, into agreements, substantially in the forms attached hereto as Exhibit B, effective on the Closing Date, with the creditors or lessors of Realco named in said agreements; provided, however, that, if the Buyer has not so entered into an agreement or agreements with one or more of such creditors or lessors, Buyer in such case will indemnify and hold harmless Seller in respect of

any loss, liability or expense which Seller may incur by reason of the undertakings of REA for which the Buyer is not substituted for REA under such agreement or agreements.

7. Additional Undertakings. (a) Seller covenants and agrees that for a period of five years after the Closing Date it will not directly or indirectly engage in the business of leasing trailers or containers to others on a per diem, or on a short or long term, basis or provide a "pooling" arrangement to freight carriers for the interchange among carriers of trailers or containers or engage in any business or aspect thereof which would be competitive with the per diem and short and long term container or trailer leasing business and interchange services of Buyer or be competitive with the present business of Realco.

(b) Seller covenants and agrees that it will continue to provide its historical maintenance services to Realco for a reasonable period of time on a reasonable basis.

(c) Buyer represents and warrants that it is purchasing the Shares and the Subordinated Debt under this Agreement for its own account for investment and not with a view to, or for sale in connection with, any distribution thereof.

8. Indemnification. Seller further agrees to indemnify and hold Buyer harmless from any and against all liability, loss or expense in excess of an aggregate of $50,000 arising

out of any misrepresentations, breaches of warranties or failure to fulfill any covenants of Seller under this Agreement or arising out of any misrepresentation or material omission from any certificate, opinion or other instrument furnished to Buyer by Seller or Realco under this Agreement. Seller will reimburse Buyer on demand for any payments by Buyer with respect to any liability, obligation or claim to which the foregoing indemnity relates, provided Buyer has notified Seller in writing promptly upon the assertion of any such claim or demand by others and has afforded Seller the opportunity to defend against any such claim or demand. To secure the foregoing right of reimbursement, Seller, at the time of closing, will deposit with United States Trust Company of New York, as escrow agent, or with such other escrow agent as may be mutually acceptable, 500 shares of the issued and outstanding Common Stock of Realco owned by REA pursuant to an agreement in substantially the form of Exhibit C hereto.

9. Expenses. Seller and Buyer shall each pay its own expenses in connection with this Agreement and the transactions contemplated hereby.

10. Miscellaneous. (a) Each party represents and warrants that there are no claims for brokerage commissions or finders' fees in connection with the transactions contemplated by this Agreement resulting from any action taken by it.

Each of the parties agrees to exoperate, indemnify, and hold harmless the other in respect of any and all losses sustained by the other as a result of liability to any broker or finder on the basis of any arrangement or agreement made by or on behalf of such party.

(b) This Agreement cannot be orally changed, amended or terminated.

(c) This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, provided that neither party shall assign any of its rights or privileges hereunder without the prior written consent of the other, except that Buyer may assign its rights or privileges hereunder to Integrated Container Service Industries Corporation (hereinafter called Industries), provided that (i) Industries shall have been duly organized under a Certificate of Incorporation, a copy of which is attached hereto as Exhibit D, and shall be validly existing and in good standing under the laws of the State of Delaware, (ii) Industries shall have assumed all the obligations of Buyer hereunder, (iii) Industries shall own 100% of the outstanding Common Stock of Buyer on the Closing Date, free and clear of all liens and encumbrances, and (iv) on the Closing Date, Seller shall have received an opinion of counsel for Industries, to the effect that (x) Industries is a corporation duly organized under a Certificate of Incorporation, a copy of which is attached

hereto as Exhibit D, and validly existing and in good standing under the laws of Delaware; (y) Industries owns 100% of the outstanding stock of Buyer; and (z) the assumption of the obligations of Buyer and the performance of this Agreement by Industries has been duly authorized by all requisite corporate action of Industries, and the obligations of Buyer hereunder, after such assumption, constitute legal, valid and binding obligations of Industries in accordance with their terms.

(d) All notices, consents, requests, instructions, approvals and other communications provided for herein and all legal process in regard hereto shall be validly given, made or served if in writing and delivered personally or sent by registered mail, postage prepaid, if to Seller, addressed to Seller, attention of the President, 219 East 42nd Street, New York, N. Y. 10017; and if to Buyer, addressed to Buyer, attention of the President, 230 Park Avenue, New York, N. Y. 10017.

(e) This Agreement shall be governed by the internal law of the State of New York.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and their respective corpo-

rate seals to be affixed hereto, all as of the day and year first above written.

RAILWAY EXPRESS AGENCY, INCORPORATED,

by

R. H. Jordan
President

Attest:

Lawrence Berman
Secretary

INTEGRATED CONTAINER SERVICE, INC.,

by

M. C. Kluge
President

Attest:

Peer Pedersen
Secretary

Exhibit JE 107

(Exhibit A intentionally omitted)

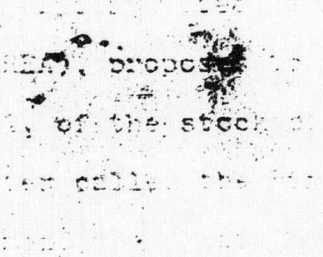

Exhibit JE 107

[Draft--10/2/68]

Exhibit B

SUPPLEMENTAL AGREEMENT, dated as of November 1, 1968, between REA Leasing Corporation, a Delaware corporation (hereinafter called the Company), and Continental Illinois National Bank and Trust Company of Chicago, a national banking association (hereinafter called the Creditor), to Credit Agreement dated as of October 15, 1965, between the parties hereto (hereinafter called the Credit Agreement).

Railway Express Agency, Incorporated, a Delaware corporation (hereinafter called REA), proposes to sell shares, constituting %, of the stock of the Company to [name of purchaser] (hereinafter called the Purchaser). It is therefore appropriate to amend the Credit Agreement to reflect the altered relationship between REA and the Company and the new relationship between the Purchaser and the Company.

Accordingly, the Company and the Creditor hereby agree as follows:

(1) Section 1.01 of the Credit Agreement is hereby amended by deleting "Railway Express Agency, Incorporated" in paragraph (m) thereof, and by adding a new paragraph (t),

to read as follows:

"(t) 'the Purchaser' shall mean [name of purchaser]."

(2) Exhibit B to the Credit Agreement is hereby deleted and Exhibit 1, attached hereto, is substituted therefor. All references in the Credit Agreement to Exhibit B shall hereafter be deemed to refer to Exhibit 1. Section 6.01(a) of the Credit Agreement is hereby amended by deleting "REA" therefrom and substituting therefor "the Purchaser".

(3) Sections 7.01(d), 7.01(e) and 7.01(g) of the Credit Agreement are hereby amended by deleting "REA" from each place in which it appears therein and substituting therefor in each such place "the Purchaser"; and, without limiting the generality of the foregoing, it is expressly agreed that the sale of shares of stock of the Company by REA to the Purchaser and the transactions in connection therewith shall not constitute an Event of Default (as defined in the Credit Agreement).

(4) Section 2.03(b) of the Credit Agreement is hereby amended by adding the words "prior to March 31, 1969" immediately following the term "Payment Date" in the first place in which such term appears in such section.

(5) A new paragraph (c) is hereby added to Section 2.03 of the Credit Agreement, to read as follows:

> "(c) On March 31, 1969, the Company shall pay to the Bank the full amount of the Debit Balance of the Advance Account remaining unpaid on such date, together with (i) accrued and unpaid interest thereon computed at the same rate or rates and subject to the same limits as are provided in Section 2.01 hereof, and (ii) if such payment is made directly or indirectly from, or in anticipation of, commercial bank borrowings other than from the Creditor, a premium of an amount equal to one-half of one percent of such amount of the Debit Balance."

(6) Prior to the date hereof, the Company shall have delivered to the Creditor a certified copy of resolutions of the Board of Directors of the Company authorizing the execution and delivery of this Supplemental Agreement and an opinion of counsel for the Company to the effect that (a) this Supplemental Agreement has been duly authorized, executed and delivered by the Company, and (b) the Supplemental Agreement and the Credit Agreement, as amended by this Supplemental Agreement, constitute valid and binding obligations of the Company enforceable in accordance with their respective terms (subject to limitations imposed by bankruptcy, insolvency, reorganization, moratorium and other laws affecting the enforcement of creditors' rights generally).

(7) The foregoing amendments and agreements shall

be effective on the date of sale of shares of stock of the Company by REA to the Purchaser, and, except as herein amended, the Credit Agreement as in effect immediately prior to the execution of this Supplemental Agreement shall continue in full force and effect pursuant to the terms thereof.

IN WITNESS WHEREOF, the Company and the Creditor have caused this Supplemental Agreement to be duly executed by their duly authorized officers, all as of the day and year first above written.

REA LEASING CORPORATION,

by _____

Attest:

_____

CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO,

by _____

Attest:

_____

166a
Exhibit JE 107

(Draft of September 17, 1968)

CONSENT, dated as of November 1, 1968, of Continental Illinois National Bank and Trust Company of Chicago, a national banking association (hereinafter called the Creditor), under Credit Agreement dated as of October 15, 1965, between REA Leasing Corporation, a Delaware corporation (hereinafter called the Company) and the Creditor (hereinafter called the Credit Agreement).

Railway Express Agency, Incorporated, a Delaware corporation (hereinafter called REA), proposes to sell immediately following the execution of this Consent shares, constituting %, of the stock of the Company, to [name of purchaser] (hereinafter called the Purchaser). It is therefore appropriate for the Company and the Creditor to amend the Credit Agreement, and prior to such amendment for the Creditor to give the consent set forth below, to reflect the altered relationship between REA and the Company and the new relationship between the Purchaser and the Company.

Accordingly, the Creditor hereby consents to the modification of the agreement referred to in Sections 5.02(h) and 6.01(a) of the Credit Agreement pursuant to the Novation Agreement dated as of November 1, 1968, among REA, the Company, the Creditor and the Purchaser which shall be substantially in the form of Exhibit A hereto.

CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY,

Attest: by

_____

_____
Secretary

Exhibit JE 107

[Draft--9/17/68]

NOVATION AGREEMENT, dated as of November 1, 1968, among REA Leasing Corporation, a Delaware corporation (hereinafter called the Company), Railway Express Agency, Incorporated, a Delaware corporation (hereinafter called REA), [name of purchaser] (hereinafter called the Purchaser) and Continental Illinois National Bank and Trust Company of Chicago, a national banking association (hereinafter called the Creditor).

Pursuant to a letter agreement, dated , 1965, of REA with the Company (hereinafter called the REA Agreement, REA undertook certain obligations for the benefit of the Creditor. REA now proposes to sell shares, constituting %, of the stock of the Company to the Purchaser. It is therefore appropriate to substitute the Purchaser for REA in respect of the obligations of REA under the REA Agreement.

Accordingly, the Company, REA, the Purchaser and the Creditor hereby agree as follows: Effective upon the date of sale of shares of stock of the Company by REA to the Purchaser, REA shall be released from each and every obligation and liability under the REA Agreement and the Purchaser

shall succeed to and be substituted for REA in respect thereof. The REA Agreement as modified by this Novation Agreement is attached hereto as Exhibit 1.

REA LEASING CORPORATION,

by _____

Attest:

_____

RAILWAY EXPRESS AGENCY, INCORPORATED,

by _____

Attest:

_____

[NAME OF PURCHASER],

by _____

Attest:

_____

CONTINENTAL ILLINOIS NATIONAL
BANK AND TRUST COMPANY OF CHICAGO,

by _____

Attest:

_____

Exhibit JE 107

[Draft of September 30, 1968

EXHIBIT 1

November 1, 1968

REA Leasing Corporation
219 East 42nd Street
New York, N.Y. 10017

Dear Sirs:

You (herein called the "Company") have entered into an agreement dated as of October 15, 1965, with Continental Illinois National Bank and Trust Company of Chicago (herein called the "Bank") providing for extensions of credit to the Company by the Bank from time to time in the amounts and upon the terms and conditions therein set forth. It is proposed that said agreement be amended by a Supplemental Agreement dated as of November 1, 1968, between the Company and the Bank (said agreement as amended being herein called the "Credit Agreement"). It is further proposed that the REA Agreement (as defined in said original agreement) be modified pursuant to a Novation Agreement dated as of November 1, 1968, among the Company, the Bank, the undersigned and Railway Express Agency, Incorporated (hereinafter called the Novation Agreement).

In order to induce the Bank to enter into the Novation Agreement and to continue to extend credit to the Company upon the terms and conditions set forth in the Credit Agreement, and

in consideration thereof, the Company and the undersigned, as the owner of per cent of the issued and outstanding capital stock of the Company, agree as follows:

1. In the event that the same shall be required to remedy a violation of the covenant contained in paragraph (a) of Section 5.02 of the Credit Agreement, the undersigned, immediately on request by the Company or by the Bank, will, from time to time, purchase common stock of the Company and/or promissory notes of the Company, subordinated to borrowings under the Credit Agreement, such purchase to be in cash or its equivalent (except that said promissory notes may provide that they may be redeemed, in whole or in part, to the extent that such redemption will not result in the Company becoming in violation of the covenant contained in paragraph (a) of Section 5.02 of the Credit Agreement), in a combined amount which will cause the ratio of the Company's Indebtedness to its Net Worth not to exceed five to one.

2. Terms used in this Agreement which are used or defined in the Credit Agreement shall have the same meaning, when used herein, as so used or defined.

3. This Agreement may not be terminated, modified or any provision thereof waived by the Company or the undersigned, or both, without the written consent of the Bank.

This Agreement shall be deemed to be a contract made in the State of Illinois and shall be governed, construed and

enforced in accordance with the laws thereof.

This Agreement may be executed in two or more counterparts each of which shall constitute but one agreement.

If the foregoing Agreement is satisfactory please evidence your approval by signing below and returning to us one of the enclosed copies hereof. The second copy enclosed is to be executed by the Company and delivered to the Bank.

Very truly yours,

[NAME OF PURCHASER],

By

_____

[Title]

We approve and accept the foregoing agreement.

REA LEASING CORPORATION,

by

_____

[Title]

Exhibit JE 107

(Draft of October 1, 1968)

SUPPLEMENTAL AGREEMENT, dated as of November 1, 1968, between REA Leasing Corporation, a Delaware corporation (hereinafter called the Company), and Brown Brothers Harriman & Co., a New York partnership (hereinafter called the Creditor), to Lease dated as of May 10, 1966, between the parties hereto (hereinafter called the Lease).

Railway Express Agency, Incorporated, a Delaware corporation (hereinafter called REA), proposes to sell shares, constituting %, of the stock of the Company and all of the Subordinated Debt (as defined in the Lease) to [name of purchaser] (hereinafter called the Purchaser). It is therefore appropriate to amend the Lease to reflect the altered relationship between REA and the Company and the new relationship between the Purchaser and the Company.

Accordingly, the Company and the Creditor hereby agree as follows:

(1) Section 17(a) of the Lease is hereby amended by deleting "REA" from the first place in which it appears in subparagraph (iii) and substituting therefor "[name of purchaser] (hereinafter called the Purchaser)", and Sec-

tions 17(a)(iv), and 18(a) and 18(g) of the Lease are hereby amended by deleting "REA" from each place in which it appears therein and substituting therefor in each such place "the Purchaser".

(2) The Creditor hereby agrees and consents that the amendment or modification of the REA Agreement, the Greyhound Agreement, the Continental Agreement and the C.I.T. Lease (as such terms are defined in the Lease) so as to be in substantially the form of Exhibits 1, 2, 3 and 4, respectively, hereto, and the consent of the Company to such amendments of modifications, shall not constitute a breach of the provisions of Section 18(e) of the Lease; and such amendments, modifications and consents, and the sale of shares of stock of the Company by REA to the Purchaser, shall not constitute an Event of Default under Section 21(e) of the Lease.

(3) Exhibit C to the Lease is hereby deleted and Exhibit 1, attached hereto, is substituted therefor. All references in the Lease to Exhibit C or the Rea Agreement shall hereafter be deemed to refer to Exhibit 1.

(4) Sections 21(f), 21(g), 21(h) and 21(i) of the Lease are hereby amended by deleting "REA" from each place in which it appears therein and substituting therefor in each place "the Purchaser"; and, without limiting the generality of the foregoing, it is expressly agreed that the sale of shares of

stock of the Company by REA to the Purchaser and the transactions in connection therewith shall not constitute an Event of Default (as defined in the Lease).

(5) Prior to the execution hereof, the Company shall have delivered to the Creditor a certified copy of resolutions of the Board of Directors of the Company authorizing the execution and delivery of this Supplemental Agreement and, prior to the execution hereof, an opinion of counsel for the Company to the effect that (a) this Supplemental Agreement has been duly authorized, executed and delivered by the Company, and (b) the Supplemental Agreement and the Lease, as amended by this Supplemental Agreement, constitute the valid and binding obligations of the Company enforceable in accordance with their respective terms (subject to limitations imposed by bankruptcy, insolvency, reorganization, moratorium and other laws affecting the enforcement of creditors' rights generally).

(6) The foregoing consents, amendments and agreements shall be effective on the date of sale of shares of stock of the Company and all of the Subordinated Debt by REA to the Purchaser, and, except as herein amended, the Lease as in effect immediately prior to the execution of this Supplemental Agreement

shall continue in full force and effect pursuant to the terms thereof.

IN WITNESS WHEREOF, the Company and the Creditor have caused this Supplemental Agreement to be duly executed by their duly authorized officers, all as of the day and year first above written.

REA LEASING CORPORATION,

by _____

Attest:

_____

BROWN BROTHERS HARRIMAN & CO.,

by _____

Attest:

_____

Exhibit JE 107

(Draft of October 1, 1968)

NOVATION AGREEMENT, dated as of November 1, 1968, among REA Leasing Corporation, a Delaware corporation (hereinafter called the Company), Railway Express Agency, Incorporated, a Delaware corporation (hereinafter called REA), [name of purchaser] (hereinafter called the Purchaser) and Brown Brothers Harriman & Co., a New York partnership (hereinafter called the Creditor).

Pursuant to a letter agreement, dated June , 1966, of REA with the Company (hereinafter called the REA Agreement), REA undertook certain obligations for the benefit of the Creditor. REA now proposes to sell shares, constituting %, of the stock of the Company and all of the Subordinated Debt (as defined in the REA Agreement) to the Purchaser. It is therefore appropriate to substitute the Purchaser for REA in respect of the obligations of REA under the REA Agreement.

Accordingly, the Company, REA, the Purchaser and the Creditor hereby agree as follows: Effective upon the date of sale of shares of stock of the Company and all of the Subordinated Debt by REA to the Purchaser, REA shall be released from each and every obligation and liability under the REA Agreement, and the Purchaser shall succeed to and be

substituted for REA in respect thereof. The REA Agreement as modified by this Novation Agreement is attached hereto as Exhibit 1.

REA LEASING CORPORATION,

by _____

Attest:

_____

RAILWAY EXPRESS AGENCY, INCORPORATED,

by _____

Attest:

_____

[NAME OF PURCHASER],

by _____

Attest:

_____

BROWN BROTHERS HARRIMAN & CO.,

by _____

Attest:

_____

Exhibit 1

178a
Exhibit JE 107

November 1, 1968

R E A Leasing Corporation
219 East 42nd Street
New York, New York 10017

Dear Sirs:

You (the "Company") propose to enter into a Supplemental Agreement dated as of November 1, 1968, between you and Brown Brothers Harriman & Co. ("BBH"), to a Lease dated as of May 10, 1966, betwen you and BBH (said lease as amended herein called the Lease Agreement) relating to the leasing of trailers for a period of eight years from the date of delivery of such trailers to the Company. You further propose to enter into a Novation Agreement dated as of November 1, 1968, among you, the undersigned, BBH and Railway Express Agency, Incorporated ("REA"). The undersigned as owner of % of the outstanding capital stock of the Company hereby agrees as follows:

(1) The undersigned agrees, for the benefit of , that any present or future claims (herein called "Subordinated Debt") which the undersigned may now or at any time hereafter have against the Company for money advanced or lent by the undersigned to the Company or to others for the Company's account, including but not limited to claims represented by promissory notes, shall at all times be junior and subordinate to the payment of all rentals and all other sums at any time owing by the Company pursuant to the Lease Agreement (herein called "Superior Debt"). Amounts of open account indebtedness in excess of $500,000 owed by the Company to the undersigned shall be included in and constitute part of Subordinated Debt as defined herein.

(2) Except as otherwise expressly permitted herein, the undersigned will not, without BBH's prior written consent, demand or receive payment of, request or obtain any security for, make any assignment or transfer to others of, or bring any action or join with any creditor in any action or proceeding for the enforcement of, or release the whole or any part of the Subordinated Debt.

(3) Upon any distribution of any assets of the Company, whether by reason of sale, reorganization, liquidation, dissolution, arrangement, bankruptcy, receivership, or any other marshalling of the assets and liabilities of the Company, BBH shall be entitled to receive payment in full of all Superior Debt prior to the payment of all or any part of the Subordinated Debt. To enable BBH to assert and enforce its rights hereunder in any such proceeding or upon the happening of any such event, BBH or any person designated by it is hereby irrevocably appointed attorney-in-fact for the undersigned with full power to act in the place and stead of the undersigned, including the right to make, present, file and vote such proofs of claim against the Company on account of all or any part of the Subordinated Debt as BBH may deem advisable and to receive and collect any and all dividends or other payments allocable to the Subordinated Debt and to apply the same on account of Superior Debt. The undersigned will execute and deliver to BBH such instruments as may be necessary to enforce all or any part of the Subordinated Debt, to effectuate the aforesaid power of attorney and to effect collection of any and all dividends or other payments which may be made at any time on account of Subordinated Debt.

(4) Notwithstanding anything herein to the contrary, the Company shall have the right to pay, and the undersigned shall have the right to receive, during any fiscal year,

payments on Subordinated Debt in amounts not exceeding 50% of the net earnings after taxes and depreciation of the Company for the previous year, provided, however, that no such payment shall be made if at the time of such payment or after giving effect thereto, (i) the undersigned shall be in default under any of its agreements hereunder or (ii) any Event of Default as defined in the Lease Agreement or any event which with the notice or lapse of time specified therein would become such an event of default has occurred and is continuing, or (iii) the ratio of "Indebtedness" to "Net Worth" of the Company (it being understood and agreed that when used in this letter the terms "Indebtedness" and "Net Worth" shall have the same meaning as defined in paragraph (18) (a) of the Lease Agreement) shall exceed 5 to 1, or (iv) any payment on Subordinated Debt shall be from sources other than earnings of the Company for the year during which such payment is made, or (v) the aggregate of paid-in capital and earned surplus of the Company shall be less than $2,500,000; and provided further, that any such payment of Subordinated Debt shall be in lieu of any payment of dividends to all stockholders of the Company, including but not limited to the undersigned, regardless of amount, for the fiscal year during or with respect to which any such payment on Subordinated Debt is made.

(5) The undersigned agrees that all promissory notes or other negotiable instruments at any time evidencing any part of the Subordinated Debt shall, if BBH should so request, be marked with a suitable legend indicating that the payment thereof is subject to the subordination agreement contained herein.

(6) The rights and privileges granted to BBH under paragraphs 1 through 5 above are subject to the rights, if any, granted to Continental Illinois National Bank and Trust Company of Chicago and Morgan Guaranty Trust Company of New York under the subordination provisions of letter agreements dated October 15, 1965 and December 15, 1965, respectively, as amended to date.

(7) The provisions of paragraphs 1 through 5 above are solely for the purpose of defining the respective rights of BBH, on the one hand and the undersigned on the other hand, and nothing contained in said paragraphs shall be deemed to grant to any other person, including the Company and its creditors, any right or privilege hereunder, nor shall any of the provisions thereof impair, as between the undersigned and the Company, the obligation of the Company, which is unconditional and absolute, to pay to the undersigned all principal of and interest on the Subordinated Debt in accordance with the terms of any notes evidencing the same, nor prevent the undersigned from exercising all rights and remedies permitted to the undersigned, whether under any such promissory note or otherwise, subject to the rights of BBH hereunder.

(8) The undersigned agrees that so long as any of the Superior Debt remains outstanding, the undersigned will not sell or otherwise dispose or encumber any of the capital stock of the Company, except that the undersigned shall have the right to sell any common stock of the Company provided that the undersigned continues at all times to own beneficially and of record at least 51% of the voting stock of the Company.

(9) The undersigned agrees that in the event the ratio of the Company's "Indebtedness" to its "Net Worth" shall at any time exceed 5 to 1, the undersigned will from time to time, immediately upon request by BBH, purchase common stock of the Company or promissory notes of the Company, or both, such purchases to be for cash in amounts which will cause the ratio of such Indebtedness to Net Worth to not exceed 5 to 1 at any time. All sums advanced to the Company for the purchase of promissory notes shall constitute monies advanced by the undersigned to the Company and shall constitute part of the Subordinated Debt as herein defined.

(10) The Undersigned agrees that BBH may enter into any agreement or agreements, and amendments thereof, as may be mutually agreed between BBH and the Company, and BBH may extend the time for payment of and/or renew all or any part of the Superior Debt, release all or any part thereof, accept partial payment thereon, or settle, release on terms satisfactory to BBH or by operation of law or otherwise, compound, compromise, collect or otherwise liquidate any Superior Debt or any security therefor in any manner, consent to the transfer of security and bid and purchase at any sale, all without notice to the undersigned and without in any way impairing or affecting the obligations of the undersigned under this agreement.

The undersigned hereby waives acceptance of this agreement by BBH. This letter agreement shall be deemed to be a contract made in the State of New York and shall be governed, construed and enforced in accordance with the laws thereof, and shall inure to the benefit of BBH, its successors and assigns, and may not be terminated, modified or any provision hereof waived without the prior written consent of BBH.

If the foregoing is satisfactory, please evidence your approval by signing below and return to us three of

the enclosed copies hereof, one of which the undersigned agrees to deliver to BBH.

Very truly yours,

[NAME OF PURCHASER]

By_____

We approve and accept the foregoing agreement and agree to be bound thereby:

R E A LEASING CORPORATION

By_____

Exhibit JE 107

(Draft of September 30, 1968)

SUPPLEMENTAL AGREEMENT, dated as of November 1, 1968, between REA Leasing Corporation, a Delaware corporation (hereinafter called the Company), and C.I.T. Leasing Corporation, a Delaware corporation (hereinafter called the Creditor), to Lease Agreement dated as of March 11, 1966, between the parties hereto (hereinafter called the Lease).

Railway Express Agency, Incorporated, a Delaware corporation (hereinafter called REA), proposes to sell shares, constituting %, of the stock of the Company to [name of purchaser] (hereinafter called the Purchaser). It is therefore appropriate to amend the Lease to reflect the altered relationship between REA and the Company and the new relationship between the Purchaser and the Company.

Accordingly, the Company and the Creditor hereby agree as follows:

(1) Section 11(b) of the Lease is hereby amended by deleting "REA" from the first place in which it appears in subparagraph (iii) thereof and substituting therefor "[name of purchaser] (hereinafter called the Purchaser)", and Sections 11(b)(iii), 11(b)(iv), 12(a), 12(h), 15(f), 15(g), 15(h) and 15(i) of the Lease are hereby amended

by deleting "REA" from each place in which it appears therien and substituting therefor in each such place "the Purchaser".

(2) The Creditor hereby agrees and consents that the amendment or modification of the REA Agreement, the Greyhound Agreement and the Continental Agreement (as such terms are defined in the Lease) so as to be in substantially the form of Exhibits 1, 2 and 3, respectively, hereto, and the consent of the Company to such amendments or modifications, shall not constitute a breach of the provisions of Section 12(f) of the Lease and such amendments, modifications and consents, and the sale of shares of stock of the Company by REA to the Purchaser shall not constitute an event of default under Sections 15(e) of the Lease.

(3) Exhibit B to the Lease is hereby deleted and Exhibit 1, attached hereto, is substituted therefor. All references in the Lease to Exhibit B or the REA Agreement shall hereafter be deemed to refer to Exhibit 1.

(4) Prior to the execution hereof, the Company shall have delivered to the Creditor a certified copy of resolutions of the Board of Directors of the Company authorizing the execution and delivery of this Supple-

mental Agreement and, prior to the execution hereof, an opinion of counsel for the Company to the effect that (a) this Supplemental Agreement has been duly authorized, executed and delivered by the Company, and (b) the Supplemental Agreement and the Lease, as amended by this Supplemental Agreement, constitute the valid and binding obligations of the Company enforceable in accordance with their respective terms (subject to limitations imposed by bankruptcy, insolvency, reorganization, moratorium and other laws affecting the enforcement of creditors' rights generally).

(5) The foregoing consents, amendments and agreements shall be effective on the date of sale of shares of stock of the Company by REA to the Purchaser, and, except as herein amended, the Lease as in effect immediately prior to the execution of this Supplemental Agreement shall continue in full force and effect pursuant to the terms thereof.

IN WITNESS WHEREOF, the Company and the Creditor have caused this Supplemental Agreement to be duly executed by their duly authorized officers, all as of the day and

year first above written.

REA LEASING CORPORATION,

by _____

Attest:

_____

C.I.T. LEASING CORPORATION,

by _____

Attest:

_____

Exhibit JE 107

(Draft of September 30, 1968)

NOVATION AGREEMENT, dated as of November 1, 1968, among REA Leasing Corporation, a Delaware corporation (hereinafter called the Company), Railway Express Agency, Incorporated, a Delaware corporation (hereinafter called REA), [name of purchaser] (hereinafter called the Purchaser) and C.I.T. Leasing Corporation, a Delaware corporation (hereinafter called the Creditor).

Pursuant to a letter agreement, dated March 11, 1966, of REA with the Company (hereinafter called the REA Agreement), REA undertook certain obligations for the benefit of the Creditor. REA now proposes to sell shares, constituting %, of the stock of the Company to the Purchaser. It is therefore appropriate to substitute the Purchaser for REA in respect of the obligations of REA under the REA Agreement.

Accordingly, the Company, REA, the Purchaser and the Creditor hereby agree as follows: Effective upon the date of sale of shares of stock of the Company by REA to the Purchaser, REA shall be released from each and every obligation and liability under the REA Agreement, and the Purchaser shall succeed to and be substituted for REA in respect thereof.

The REA Agreement as modified by this Novation Agreement is attached hereto as Exhibit 1.

REA LEASING CORPORATION,

by _____

Attest:

_____

RAILWAY EXPRESS AGENCY, INCORPORATED,

by _____

Attest:

_____

[NAME OF PURCHASER],

by _____

Attest:

_____

C.I.T. LEASING CORPORATION,

by _____

Attest:

_____

Exhibit JE 107 Exhibit 1

November 1, 1968

R E A Leasing Corporation
219 East 42nd Street
New York, New York 10017

Dear Sirs:

You (the "Company") propose to enter into a Supplemental Agreement dated as of November 1, 1968, between you and C.I.T. Leasing Corporation ("C.I.T."), to a Lease Agreement dated as of March 11, 1966, between you and C.I.T. (said Lease Agreement as so amended being herein called the "Lease Agreement") relating to the leasing of trailers for a period of nine years from the date of delivery of such trailers to the Company. Accordingly, the undersigned as owner of per cent of the outstanding capital stock of the Company hereby agrees as follows:

(1) The undersigned agrees, for the benefit of C.I.T., that any present or future claims (herein called "Subordinated Debt") which the undersigned may now or at any time hereafter have against the Company for money advanced or lent by the undersigned or by Railway Express Agency, Incorporated ("REA") to the Company or to others for the Company's account, including but not limited to claims represented by promissory notes, shall at all times be junior and subordinate to the payment of all rentals and all other sums at any time owing by the Company pursuant to the Lease Agreement (herein called "Superior Debt"). Amounts of open account indebtedness in excess of $500,000 owed by the Company to the undersigned shall be included in and constitute part of Subordinated Debt as defined herein.

(2) Except as otherwise expressly permitted herein, the undersigned will not, without C.I.T.'s prior written consent, demand or receive payment of, request or obtain any security for, make any assignment or transfer to others of, or bring any action or join with any creditor in any action or proceeding for the enforcement of, or release the whole or any part of the Subordinated Debt.

(3) Upon any distribution of any assets of the Company, whether by reason of sale, reorganization, liquidation, dissolution. arrangement, bankruptcy, receivership, or any other marshalling of the assets and liabilities of the Company, C.I.T. shall be entitled to receive payment in full of all Superior Debt prior to the payment of all or any part of the Subordinated Debt. To enable C.I.T. to assert and enforce its rights hereunder in any such proceeding or upon the happening of any such event, C.I.T. or any person designated by it is hereby irrevocably appointed attorney-in-fact for the undersigned with full power to act in the place and stead of the undersigned, including the right to make, present, file and vote such proofs of claim against the Company on account of all or any part of the Subordinated Debt as C.I.T. may deem advisable and to receive and collect any and all dividends or other payments allocable to the Subordinated Debt and to apply the same on account of Superior Debt. The undersigned will execute and deliver to C.I.T. such instruments as may be necessary to enforce all or any part of the Subordinated Debt, to effectuate the aforesaid power of attorney and to effect collection of any and all dividends or other payments which may be

made at any time on account of Subordinated Debt.

(4) Notwithstanding anything herein to the contrary, the Company shall have the right to pay, and the undersigned shall have the right to receive, during any fiscal year, payments on Subordinated Debt in amounts not exceeding 50% of the net earnings after taxes and depreciation of the Company for the previous year, provided, however, that no such payment shall be made if at the time of such payment or after giving effect thereto, (i) the undersigned shall be in default under any of its agreements hereunder or (ii) any Event of Default as defined in the Lease Agreement or any event which with the notice or lapse of time specified therein would become such an event of default has occurred and is continuing, or (iii) the ratio of "Indebtedness" to "Net Worth" of the Company (it being understood and agreed that when used in this letter the terms "Indebtedness" and "Net Worth" shall have the same meaning as defined in paragraph (12) (a) of the Lease Agreement) shall exceed 5 to 1, or (iv) any payment on Subordinated Debt shall be from sources other than earnings of the Company for the year during which such payment is made, or (v) the aggregate of paid-in capital and earned surplus of the Company shall be less than $2,500,000; and provided further, that any such payment of Subordinated Debt shall be in lieu of any payment of dividends to all stockholders of the Company, including but not limited to the undersigned, regardless of amount, for the fiscal year during or with respect to which any such payment on Subordinated Debt is made.

(5) The undersigned agrees that all promissory notes or other negotiable instruments at any time evidencing any part of the Subordinated Debt shall, if C.I.T. should so

request, be marked with a suitable legend indicating that the payment thereof is subject to the subordination agreement contained herein.

(6) The rights and privileges granted to C.I.T. under paragraph 1 through 5 above are subject to the rights, if any, granted to Continental Illinois National Bank and Trust Company of Chicago and Morgan Guaranty Trust Company of New York under the subordination provisions of letter agreements dated October 15, 1965, and December 15, 1965, as amended to date.

(7) The provisions of paragraphs 1 through 5 above are solely for the purpose of defining the respective rights of C.I.T., on the one hand and the undersigned on the other hand, and nothing contained in said paragraphs shall be deemed to grant to any other person, including the Company and its creditors, any right or privilege hereunder, nor shall any of the provisions thereof impair, as between the undersigned and the Company, the obligation of the Company, which is unconditional and absolute, to pay to the undersigned all principal of and interest on the Subordinated Debt in accordance with the terms of any notes evidencing the same, nor prevent the undersigned from exercising all rights and remedies permitted to the undersigned, whether under any such promissory note or otherwise, subject to the rights of C.I.T. hereunder.

(8) The undersigned agrees that so long as any of the Superior Debt remains outstanding, the undersigned will not sell or otherwise dispose or encumber any of the capital stock of the Company, except that the undersigned shall have the right to sell any common stock of the Company provided that the undersigned continues at all times to own beneficially and of record at least 51% of the voting stock of the Company.

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Exhibit JE 107

(9) The undersigned agrees that in the event the ratio of the Company's "Indebtedness" to its "Net Worth" shall at any time exceed 5 to 1, the undersigned will from time to time, immediately upon request by C.I.T., purchase Common stock of the Company or promissory notes of the Company, or both, such purchases to be for cash in amounts which will cause the ratio of such Indebtedness to Net Worth to not exceed 5 to 1 at any time. All sums advanced to the Company for the purchase of promissory notes shall constitute monies advanced by the undersigned to the Company and shall constitute part of the Subordinated Debt as herein defined.

(10) The undersigned agrees that C.I.T. may enter into any agreement or agreements, and amendments thereof, as may be mutually agreed between C.I.T. and the Company, and C.I.T. may extend the time for payment of and/or renew all or any part of the Superior Debt, release all or any part thereof, accept partial payment thereon, or settle, release on terms satisfactory to C.I.T. or by operation of law or otherwise, compound, compromise, collect or otherwise liquidate any Superior Debt or any security therefor in any manner, consent to the transfer of security and bid and purchase at any sale, all without notice to the undersigned and without in any way impairing or affecting the obligations of the undersigned under this Agreement.

The undersigned hereby waives acceptance of this agreement by C.I.T. This letter agreement shall be deemed to be a contract made in the State of New York and shall be governed, construed and enforced in accordance with the laws thereof, and shall inure to the benefit of C.I.T., its successors and assigns, and may not be terminated, modified or any provision hereof waived without the prior written consent of C.I.T.

If the foregoing is satisfactory, please evidence your approval by signing below and return to us three of

the enclosed copies hereof, one of which the undersigned agrees to deliver to C.I.T.

Very truly yours,

[NAME OF PURCHASER]

by _____

We approve and accept the foregoing agreement and agree to be bound thereby:

R E A LEASING CORPORATION

by _____

Exhibit JE 107

(Draft of September 30, 1968)

SUPPLEMENTAL AGREEMENT, dated as of November 1, 1968, between REA Leasing Corporation, a Delaware corporation (hereinafter called the Company), and Herbert T. Lundahl and John F. Futcher as trustees for United California Bank, a California banking corporation (said trustees being hereinafter collectively called the Creditor), to Lease Agreement dated , between the parties hereto (hereinafter called the Lease).

Railway Express Agency, Incorporated, a Delaware corporation (hereinafter called REA), proposes to sell shares, constituting %, of the stock of the Company to [name of purchaser] (hereinafter called the Purchaser). It is therefore appropriate to amend the Lease to reflect the altered relationship between REA and the Company and the new relationship between the Purchaser and the Company.

Accordingly, the Company and the Creditor hereby agree as follows:

(1) Section 10(b) of the Lease is hereby amended by deleting "REA" from the first place in which it appears in subparagraph (iii) thereof and substituting therefor "[name of purchaser] (hereinafter called the Purchaser)", and Section 11(a), 14(e), 14(f), 14(g) and 14(h) of the

Lease are hereby amended by deleting "REA" from each place in which it appears therein and substituting therefor in each such place "the Purchaser".

(2) The Creditor hereby agrees and consents that the amendment or modification of the REA Agreement (as such term is defined in the Lease) so as to be in substantially the form of Exhibit 1 hereto, and the consent of the Company to such amendment or modification, shall not constitute a breach of the provisions of Section 11(f) of the Lease.

(3) Exhibit B to the Lease is hereby deleted and Exhibit 1, attached hereto, is substituted therefor. All references in the Lease to Exhibit B or the REA Agreement shall hereafter be deemed to refer to Exhibit 1.

(4) Prior to the execution hereof, the Company shall have delivered to the Creditor a certified copy of resolutions of the Board of Directors of the Company authorizing the execution and delivery of this Supplemental Agreement and, prior to the execution hereof, an opinion of counsel for the Company to the effect that (a) this Supplemental Agreement has been duly authorized, executed and delivered by the Company, and (b) the Supplemental Agreement and the Lease, as amended by this Supplemental Agreement, constitute the valid and binding

obligations of the Company enforceable in accordance with their respective terms (subject to limitations imposed by bankruptcy, insolvency, reorganization, moratorium and other laws affecting the enforcement of creditors' rights generally).

(5) The foregoing consents, amendments and agreements shall be effective on the date of sale of shares of stock of the Company by REA to the Purchaser, and, except as herein amended, the Lease as in effect immediately prior to the execution of this Supplemental Agreement shall continue in full force and effect pursuant to the terms thereof.

IN WITNESS WHEREOF, the Company and the Creditor have caused this Supplemental Agreement to be duly executed by their duly authorized officers, all as of the day and year first above written.

REA LEASING CORPORATION,

Attest: by _____

_____

_____
Herbert T. Lundahl, as Trustee

_____
John F. Futcher, as Trustee

Exhibit JE 107

(Draft of September 30, 1968)

NOVATION AGREEMENT, dated as of November 1, 1968, among REA Leasing Corporation, a Delaware corporation (hereinafter called the Company), Railway Express Agency, Incorporated, a Delaware corporation (hereinafter called REA), [name of purchaser] (hereinafter called the Purchaser) and Herbert T. Lundahl and John F. Futcher, as trustees for United California Bank, a California banking corporation (said trustees hereinafter collectively called the Creditor).

Pursuant to a letter agreement, dated , 19 , of REA with the Company (hereinafter called the REA Agreement), REA undertook certain obligations for the benefit of the Creditor. REA now proposes to sell shares, constituting %, of the stock of the Company to the Purchaser. It is therefore appropriate to substitute the Purchaser for REA in respect of the obligations of REA under the REA Agreement.

Accordingly, the Company, REA, the Purchaser and the Creditor hereby agree as follows: Effective upon the date of sale of shares of stock of the Company by REA to the Purchaser, REA shall be released from each and every obligation and liability under the REA Agreement, and the Purchaser shall succeed to and be substituted for REA in respect thereof.

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Exhibit JE 107

The REA Agreement as modified by this Novation Agreement is attached hereto as Exhibit 1.

REA LEASING CORPORATION,

by _____

Attest:

_____

RAILWAY EXPRESS AGENCY, INCORPORATED,

by _____

Attest:

_____

[NAME OF PURCHASER],

by _____

Attest:

_____

_____
Herbert T. Lundahl, as Trustee

_____
John F. Futcher, as Trustee

Exhibit JE 107

(Draft of October 2, 1968)

Dated as of
November 1, 1968

REA Leasing Corporation
219 East 42nd Street
New York, N. Y. 10017

Gentlemen:

You (the "Company") have entered into an agreement (the "Security Agreement") dated with United California Bank (the "Bank") relating to the sale of trailers. You propose to enter into a Supplemental Agreement dated as of November 1, 1968, between the Company and Herbert T. Lundahl and John F. Futcher, as Trustees for the benefit of the Bank, to a Lease Agreement dated , between the parties thereto. In connection therewith the Company proposes to enter into a Novation Agreement dated as of November 1, 1968, among the Company, the above-mentioned trustees for the Bank, the undersigned and Railway Express Agency, Incorporated ("REA"). Accordingly, the undersigned, as owner of % of the outstanding capital stock of the Company, hereby agrees as follows:

(1) The undersigned agrees, for the benefit of Bank, that any present or future claims (herein called "Subordinated Debt") which the undersigned may now or at any time hereafter have against the Company for money advanced or lent by the undersigned or by REA to the Company or to others for the Company's account, including, but not limited to, claims represented by promissory notes, shall at all times be junior and subordinate to the payment of all sums at any time owing by the Company pursuant to the Security Agreement (herein called "Superior Debt").

(2) Except as otherwise expressly permitted herein, the undersigned will not, without Bank's prior written consent, demand or receive payment of, request or obtain any security for, make any assignment or transfer to others of, or bring any action or join with any creditor in any action or proceeding for the enforcement of, or release the whole or any part of the Subordinated Debt.

(3) Upon any distribution of any assets of the Company, whether by reason of sale, reorganization, liquidation, dissolution, arrangement, bankruptcy, receivership, or any other marshalling of the assets and liabilities of the Company, Bank shall be entitled to receive payment in full of all Superior Debt prior to the payment of all or any part of the Subordinated Debt. To enable Bank to assert and enforce its rights hereunder in any such proceeding or upon the happening of any such event, Bank or any person designated by it is hereby irrevocably appointed attorney-in-fact for the undersigned with

full power to act in the place and stead of the undersigned, including the right to make, present, file and vote such proofs of claim against the Company on account of all or any part of the Subordinated Debt as Bank may deem advisable and to receive and collect any and all dividends or other payments allocable to the Subordinated Debt and to apply the same on account of Superior Debt. The undersigned will execute and deliver to Bank such instruments as may be necessary to enforce all or any part of the Subordinated Debt, to effectuate the aforesaid power of attorney and to effect collection of any and all dividends or other payments which may be made at any time on account of Subordinated Debt.

(4) The undersigned agrees that all promissory notes or other negotiable instruments at any time evidencing any part of the Subordinated Debt shall, if Bank should so request, be marked with a suitable legend indicating that the payment thereof is subject to the subordination agreement contained herein.

(5) The provisions of paragraphs 1 through 4 above are solely for the purpose of defining the respective rights of Bank, on the one hand and the undersigned on the other hand, and nothing contained in said paragraphs shall be deemed to grant to any other person, including the Company and its creditors, any right or privilege hereunder, nor shall any of the provisions thereof impair, as between the undersigned and the Company, the obligation of the Company, which is unconditional and absolute, to pay to the undersigned all principal of and interest on the Subordinated Debt in accordance with the terms of any notes evidencing the same, nor prevent the undersigned from exercising all rights and remedies permitted to the undersigned, whether under any such promissory note or otherwise, subject to the rights of Bank hereunder.

(6) The undersigned agrees that so long as any of the Superior Debt remains outstanding, the undersigned will not sell or otherwise dispose of or encumber any of the capital stock of the Company, except that the undersigned shall have the right to sell any common stock of the Company provided that the undersigned continues at all times to own beneficially and of record at least 51% of the voting stock of the Company.

(7) The undersigned agrees that in the event the ratio

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of the Company's Indebtedness" to its "Net Worth" shall at any time exceed 5 to 1, the undersigned will from time to time, immediately upon request by Bank, purchase common stock of the Company or promissory notes of the Company, or both, such purchases to be for cash in amounts which will cause the ratio of such Indebtedness to Net Worth to not exceed 5 to 1 at any time. All sums advanced to the Company for the purchase of such promissory notes shall constitute monies advanced by the undersigned to the Company and shall constitute part of the Subordinated Debt as herein defined. For the purpose hereof "Net Worth" shall mean (a) the aggregate of capital and surplus of the Company, plus its tax equalization reserve; and (b) so long as no event of default specified in the Security Agreement and no event which with the notice or lapse of time specified therein would become such event of default shall have occurred and be continuing, the unpaid principal amount, at the time of computation, of Subordinated Debt. In addition, for the purpose hereof; "Indebtedness" shall mean the aggregate of (x) indebtedness of the Company (other than Subordinated Debt for money borrowed); (y) all other items which in accordance with good accounting practices would be included in determining total liabilities as showing on the liability side of a balance sheet (other than tax depreciation equalization reserve); and (z) the depreciated value of all equipment or personal property leased by the Company under leases, it being understood that for the computation of such depreciated value such leased equipment and property shall be depreciated on a straight line basis in accordance with generally accepted accounting principles, at a rate which would fully depreciate such equipment and property in eight years.

(8) If at any time during the term of the Security Agreement there is insufficient cash on hand in the Company to pay an instalment due and owing under said Security Agreement, the undersigned agrees that it will, immediately upon request by Bank, purchase common stock of the Company or promissory notes of the Company, or both, such purchases to be for cash in amounts which will make available to the Company cash sufficient to pay such current instalment under said Security Agreement. All sums advanced to the Company for the purchase of such promissory notes shall constitute monies advanced by the undersigned to the Company and shall constitute part of the Subordinated Debt as herein defined.

(9) The undersigned agrees that Bank may enter into any

agreement or agreements, and amendments thereof, as may be mutually agreed between Bank and the Company, and Bank may extend the time for payment of and/or renew all or any part of the Superior Debt, release all or any part thereof, accept partial payment thereon, or settle, release on terms satisfactory to Bank or by operation of law or otherwise, compound, compromise, collect or otherwise liquidate any Superior Debt or any security therefor in any manner, consent to the transfer of security and bid and purchase at any sale, all without notice to the undersigned and without in any way impairing or affecting the obligations of the undersigned under this agreement.

The undersigned hereby waives acceptance of this agreement by Bank. This letter agreement shall be deemed to be a contract made in the State of California and shall be governed, construed and enforced in accordance with the laws thereof, and shall inure to the benefit of Bank, its successors and assigns, and may not be terminated, modified or any provision hereof waived without the prior written consent of Bank.

If the foregoing is satisfactory, please evidence your approval by signing below and return to us three of the enclosed copies hereof, one of which the undersigned agrees to deliver to Bank.

Yours very truly,

[NAME OF PURCHASER]

By_____

We approve and accept the foregoing agreement and agree to be bound thereby.

REA LEASING CORPORATION

By_____

Exhibit JE 107

(Draft of October 1, 1968)

SUPPLEMENTAL AGREEMENT, dated as of November 1, 1968, between REA Leasing Corporation, a Delaware corporation (hereinafter called the Company), and Strick Corporation, a Pennsylvania corporation (hereinafter called the Creditor), to Lease Agreement dated July 1, 1966, between the parties hereto (hereinafter called the Lease).

Railway Express Agency, Incorporated, a Delaware corporation (hereinafter called REA), proposes to sell shares, constituting %, of the stock of the Company to [name of purchaser] (hereinafter called the Purchaser). It is therefore appropriate to amend the Lease to reflect the altered relationship between REA and the Company and the new relationship between the Purchaser and the Company.

Accordingly, the Company and the Creditor hereby agree as follows:

(1) Section 9(a) of the Lease is hereby amended by deleting "REA" from the first place in which it appears in subparagraph (iii) and substituting therefor "[name of purchaser] (hereinafter called the Purchaser)", and Sections 9(a)(iv), 14(g), and 14(h) of the Lease are hereby amended by deleting "REA" from each place in which it appears therein and substituting therefor in each such

place "the Purchaser".

(2) The Creditor hereby agrees and consents that the amendment or modification of the REA Agreement, the Greyhound Agreement and the Continental Agreement (as such terms are defined in the Lease) so as to be in substantially the form of Exhibits 1, 2 and 3, respectively, hereto, and the consent of the Company to such amendments or modifications, shall not constitute a breach of the provisions of Section 10(d) of the Lease; and such amendments, modifications and consents, and the sale of shares of stock of the Company by REA to the Purchaser, shall not constitute an Event of Default under Section 14(e) of the Lease.

(3) Exhibit B to the Lease is hereby deleted and Exhibit 1, attached hereto, is substituted therefor. All references in the Lease to Exhibit B or the REA Agreement shall hereafter be deemed to refer to Exhibit 1.

(4) Prior to the execution hereof, the Company shall have delivered to the Creditor a certified copy of resolutions of the Board of Directors of the Company authorizing the execution and delivery of this Supplemental Agreement and, prior to the execution hereof, an opinion of counsel for the Company to the effect that (a) this Supplemental Agreement has been duly authorized, executed and delivered by the Company, and (b) the Supplemental Agreement and the Lease, as amended by this

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Exhibit JE 107

Supplemental Agreement, constitute the valid and binding obligations of the Company enforceable in accordance with their respective terms (subject to limitations imposed by bankruptcy, insolvency, reorganization, moratorium and other laws affecting the enforcement of creditors' rights generally).

(5) The foregoing consents, amendments and agreements shall be effective on the date of sale of shares of stock of the Company by REA to the Purchaser, and, except as herein amended, the Lease as in effect immediately prior to the execution of this Supplemental Agreement shall continue in full force and effect pursuant to the terms thereof.

IN WITNESS WHEREOF, the Company and the Creditor have caused this Supplemental Agreement to be duly executed by their duly authorized officers, all as of the day and year first above written.

REA LEASING CORPORATION,

by _____

Attest:

_____

STRICK CORPORATION,

by _____

Attest:

_____

Exhibit JE 107

(Draft of October 1, 1968)

NOVATION AGREEMENT, dated as of November 1, 1968, among REA Leasing Corporation, a Delaware corporation (hereinafter called the Company), Railway Express Agency, Incorporated, a Delaware corporation (hereinafter called REA), [name of purchaser] (hereinafter called the Purchaser) and Strick Corporation, a Pennsylvania corporation (hereinafter called the Creditor).

Pursuant to a letter agreement, dated , 1966, of REA with the Company (hereinafter called the REA Agreement), REA undertook certain obligations for the benefit of the Creditor. REA now proposes to sell shares, constituting %, of the stock of the Company to the Purchaser. It is therefore appropriate to substitute the Purchaser for REA in respect of the obligations of REA under the REA Agreement.

Accordingly, the Company, REA, the Purchaser and the Creditor hereby agree as follows: Effective upon the date of sale of shares of stock of the Company by REA to the Purchaser, REA shall be released from each and every obligation and liability under the REA Agreement, and the Purchaser shall succeed to and be substituted for REA in respect thereof.

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Exhibit JE 107

The REA Agreement as modified by this Novation Agreement is attached hereto as Exhibit 1.

REA LEASING CORPORATION,

by _____

Attest:

_____

RAILWAY EXPRESS AGENCY, INCORPORATED,

by _____

Attest:

_____

[NAME OF PURCHASER],

by _____

Attest:

_____

STRICK CORPORATION,

by _____

Attest:

_____

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Exhibit JE 107

[Draft--10/2/68]

Exhibit 1

November 1, 1968

R E A Leasing Corporation
219 East 42nd Street
New York, New York 10017

Gentlemen:

You (the "Company") propose to enter into a Supplemental Agreement, dated as of November 1, 1968, between the Company and Strick Corporation ("Strick"), to a Lease Agreement, dated July 1, 1966, between the Company and Strick (said Lease Agreement as amended being herein called the "Lease Agreement"), relating to the leasing of trailers for a period of eight years from the date of delivery of such trailers to the Company. In connection therewith, the Company proposes to enter into a Novation Agreement, dated as of November 1, 1966, among the Company, Strick, the undersigned and Railway Express Agency, Incorporated ("REA"). Accordingly, the undersigned as owner of per cent of the outstanding capital stock of the Company hereby agrees as follows:

(1) The undersigned agrees, for the benefit of Strick, that any present or future claims (herein called "Subordinated Debt") which the undersigned may now or at any time hereafter have against the Company for money advanced or lent by the undersigned or by REA to the Company or to others for the Company's account, including but not limited to claims represented by promissory notes, shall at all times be junior and subordinate to the payment of all rentals and all other sums at any time owing by the Company pursuant to the Lease Agreement (herein called "Superior Debt").

(2) Except as otherwise expressly permitted herein, the undersigned will not, without Strick's prior written consent, demand or receive payment of, request or obtain any security for, make any assignment or transfer to others of, or bring any action or join with any creditor in any action or proceeding

for the enforcement of, or re-lease the whole or any part of the Subordinated Debt.

(3) Upon any distribution of any assets of the Company, whether by reason of sale, re-organization, liquidation, dissolution, arrangement, bankruptcy, receivership, or any other marshalling of the assets and liabilities of the Company, Strick shall be entitled to receive payment in full of all Superior Debt prior to the payment of all or any part of the Subordinated Debt. To enable Strick to assert and enforce its rights hereunder in any such proceeding or upon the happening of any such event, Strick or any person designated by it is hereby irrevocably appointed attorney-in-fact for the undersigned with full power to act in the place and stead of the undersigned, including the right to make, present, file and vote such proofs of claim against the Company on account of all or any part of the Subordinated Debt as Strick may deem advisable and to receive and collect any and all dividends or other payments allocable to the Subordinated Debt and to apply the same on account of Superior Debt. The undersigned will execute and deliver to Strick such instruments as may be necessary to enforce all or any part of the Subordinated Debt, to effectuate the aforesaid power of attorney and to effect collection of any and all dividends or other payments which may be made at any time on account of Subordinated Debt.

(4) Notwithstanding anything herein to the contrary, the Company shall have the right to pay, and the undersigned shall have the right to receive, during any fiscal year, payments on Subordinated Debt in amounts not exceeding 50% of the net earnings after taxes and depreciation of the Company for the previous year, provided, however, that no such payment shall be made if at the time of such payment

or after giving effect thereto, (i) the undersigned shall be in default under any of its agreements hereunder or (ii) any Event of Default as defined in the Lease Agreement or any event which with the notice of lapse of time specified therein would become such an event of default has occurred and is continuing, or event of default has occurred and is continuing, or (iii) the ratio of "Indebtedness" to "Net Worth" of the Company shall exceed 5 to 1, or (iv) any payment on Subordinated Debt shall be from sources other than earnings of the Company for the year during which such payment is made, or (v) the aggregate of paid-in capital and earned surplus of the Company shall be less than $2,500,000; and provided further, that any such payment of Subordinated Debt shall be in lieu of any payment of dividends to all stockholders of the Company, including but not limited to the undersigned, regardless of amount, for the fiscal year during or with respect to which any such payment on Subordinated Debt is made.

(5) The rights and privileges granted to Strick under paragraphs 1 through 4 above are subject to the rights, if any, granted to Continental Illinois National Bank and Trust Company of Chicago and Morgan Guaranty Trust Company of New York and C.I.T. Leasing Corporation under the subordination provisions of letter agreements dated October 15, 1965 and December 15, 1965, and March 11, 1966, as amended to date.

(6) The provisions of paragraphs 1 through 4 above are solely for the purpose of defining the respective rights of Strick, on the one hand and the undersigned on the other hand, and nothing contained in said paragraphs shall be deemed to grant to any other persons, including the Company and its creditors, any right or privilege hereunder, nor shall any of the provisions thereof impair, as between the undersigned and the Company, the obligation of the Company, which is unconditional

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and absolute, to pay to the undersigned all principal of and interest on the Subordinated Debt in accordance with the terms of any notes evidencing the same, nor prevent the undersigned from exercising all rights and remedies permitted to the undersigned, whether under any such promissory note or otherwise, subject to the rights of Strick hereunder.

(7) The undersigned agrees that so long as any of the Superior Debt remains outstanding, the undersigned will not sell or otherwise dispose or encumber any of the capital stock of the Company, except that the undersigned shall have the right to sell any common stock of the Company provided that the undersigned continues at all times to own beneficially and of record at least 51% of the voting stock of the Company.

(8) The undersigned agrees that in the event the ratio of the Company's "Indebtedness" to its "Net Worth" shall at any time exceed 5 to 1, the undersigned will from time to time, immediately upon request by Strick, purchase common stock of the Company or promissory notes of the Company, or both, such purchases to be for cash in amounts which will cause the ratio of such Indebtedness to Net Worth to not exceed 5 to 1 at any time. All sums advanced to the Company for the purchase of promissory notes shall constitute monies advanced by the undersigned to the Company and shall constitute part of the Subordinated Debt as herein defined.

(9) The undersigned agrees that Strick may enter into any agreement or agreements, and amendments thereof, as may be mutually agreed between Strick and the Company, and Strick may

extend the time for payment of and/or renew all or any part of the Superior Debt, release all or any part thereof, accept partial payment thereon, or settle, release on terms satisfactory to Strick or by operation of law or otherwise, compound, compromise, collect or otherwise liquidate any Superior Debt or any security therefor in any manner, consent to the transfer of security and bid and purchase at any sale, all without notice to the undersigned and without in any way impairing or affecting the obligations of the undersigned under this agreement.

The undersigned hereby waives acceptance of this agreement by Strick. This letter agreement shall be deemed to be a contract made in the State of New York and shall be governed, construed and enforced in accordance with the laws thereof, and shall inure to the benefit of Strick, its successors and assigns, and may not be terminated, modified or any provision hereof waived without the prior written consent of Strick.

If the foregoing is satisfactory, please evidence your approval by signing below and returning to us three of the enclosed copies hereof, one of which the undersigned agrees to deliver to Strick.

Very truly yours,

[NAME OF PURCHASER]

by

_____

We approve and accept the foregoing agreement and agree to be bound thereby:

R E A LEASING CORPORATION

by

_____

Exhibit JE 107

(Draft of September 30, 1968)

SUPPLEMENTAL AGREEMENT, dated as of November 1, 1968, between REA Leasing Corporation, a Delaware corporation (hereinafter called the Company), and Greyhound Leasing & Financial Corporation, a corporation (hereinafter called the Creditor), to an Equipment Lease Agreement and Rider dated April 7, 1965, as amended by an Amendment dated as of December 15, 1965, between the parties (or their predecessors) hereto (said Agreement as amended hereinafter called the Lease).

Railway Express Agency, Incorporated, a Delaware corporation (hereinafter called REA), proposes to sell shares, constituting %, of the stock of the Company to [name of purchaser] (hereinafter called the Purchaser). It is therefore appropriate to amend the Lease to reflect the altered relationship between REA and the Company and the new relationship between the Purchaser and the Company.

Accordingly, the Company and the Creditor hereby agree as follows:

(1) Section XV of the Lease is hereby amended by adding the words "as amended by a Supplemental Agreement

dated as of November 1, 1968," after "Continental Illinois".

(2) The Creditor hereby agrees and consents that the sale of shares of stock of the Company by REA to the Purchaser and the amendment or modification of the Credit Agreement dated as of October 15, 1965, between the Company and Continental Illinois National Bank and Trust Company of Chicago pursuant to the Supplemental Agreement dated as of November 1, 1968, between the parties thereto, attached hereto as Exhibit 1, and the consent of the Company to such amendment or modification, shall not constitute a breach of the provisions of Section XV of the Lease.

(3) Prior to the execution hereof, the Company shall have delivered to the Creditor a certified copy of resolutions of the Board of Directors of the Company authorizing the execution and delivery of this Supplemental Agreement and, prior to the execution hereof, an opinion of counsel for the Company to the effect that (a) this Supplemental Agreement has been duly authorized, executed and delivered by the Company, and (b) the Supplemental Agreement and the Lease, as amended by this Supplemental Agreement, constitute the valid and binding obligations of the Company enforceable in accordance

with their respective terms (subject to limitations imposed by bankruptcy, insolvency, reorganization, moratorium and other laws affecting the enforcement of creditors' rights generally).

(4) The foregoing consents, amendments and agreements shall be effective on the date of sale of shares of stock of the Company by REA to the Purchaser, and, except as herein amended, the Lease as in effect immediately prior to the execution of this Supplemental Agreement shall continue in full force and effect pursuant to the terms thereof.

IN WITNESS WHEREOF, the Company and the Creditor have caused this Supplemental Agreement to be duly executed by their duly authorized officers, all as of the day and year first above written.

REA LEASING CORPORATION,

by _____

Attest:

_____

GREYHOUND LEASING & FINANCIAL CORPORATION,

by _____

Attest:

_____

Exhibit JE 107

(Draft of September 30, 1968)

SUPPLEMENTAL AGREEMENT, dated as of November 1, 1968, between REA Leasing Corporation, a Delaware corporation (hereinafter called the Company), and Able Trailers, Inc., a Delaware corporation (hereinafter called the Creditor), to Agreement of Lease dated as of December 1, 1966, between the parties hereto (hereinafter called the Lease).

Railway Express Agency, Incorporated, a Delaware corporation (hereinafter called REA), proposes to sell shares, constituting %, of the stock of the Company to [name of purchaser] (hereinafter called the Purchaser). It is therefore appropriate to amend the Lease to reflect the altered relationship between REA and the Company and the new relationship between the Purchaser and the Company.

Accordingly, the Company and the Creditor hereby agree as follows:

(1) Section 13(e) of the Lease is hereby amended by deleting "Railway Express Agency, Incorporated" and by substituting therefor "[name of the Purchaser]".

(2) Prior to the date hereof, the Company shall have delivered to the Creditor a certified copy of resolutions of the Board of Directors of the Company

authorizing the execution and delivery of this Supplemental Agreement and an opinion of counsel for the Company to the effect that (a) this Supplemental Agreement has been duly authorized, executed and delivered by the Company, and (b) the Supplemental Agreement and the Lease, as amended by this Supplemental Agreement, constitute valid and binding obligations of the Company enforceable in accordance with their respective terms (subject to limitations imposed by bankruptcy, insolvency, reorganization, moratorium and other laws affecting the enforcement of creditors' rights generally).

(3) The foregoing amendments and agreements shall be effective on the date of sale of shares of stock of the Company by REA to the Purchaser, and, except as herein amended, the Lease as in effect immediately prior to the execution of this Supplemental Agreement shall continue in full force and effect pursuant to the terms thereof.

IN WITNESS WHEREOF, the Company and the Creditor have caused this Supplemental Agreement to be duly executed

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by their duly authorized officers, all as of the day and year first above written.

REA LEASING CORPORATION,

by _____

Attest:

_____

ABLE TRAILERS, INC.,

by _____

Attest:

_____

Exhibit JE 107

(Draft of October 1, 1968)

NOVATION AGREEMENT, dated as of November 1, 1968, among Railway Express Agency, Incorporated, a Delaware corporation (hereinafter called REA), [name of purchaser] (hereinafter called the Purchaser), Fruehauf Corporation, a Michigan corporation (hereinafter called Fruehauf), and Suemeg Company, a Delaware partnership (hereinafter called Suemeg).

Pursuant to a letter agreement, dated July 13, 1966, of REA with Fruehauf and Suemeg (hereinafter called the Agreement), REA undertook certain obligations for the benefit of Suemeg. REA now proposes to sell shares, constituting %, of the stock of REA Leasing Corporation to the Purchaser. It is therefore appropriate to substitute the Purchaser for REA in respect of the obligations of REA under the Agreement.

Accordingly, REA, the Purchaser, Fruehauf and Suemeg hereby agree as follows: Effective upon the date of sale of shares of stock of REA Leasing Corporation by REA to the Purchaser, REA shall be released from each and every obligation and liability under the Agreement, and the Purchaser shall succeed to and be substituted for REA in respect thereof.

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The Agreement as modified by this Novation Agreement is attached hereto as Exhibit 1.

RAILWAY EXPRESS AGENCY, INCORPORATED,

by _____

Attest:

_____

[NAME OF PURCHASER],

by _____

Attest:

_____

SUEMEG COMPANY,

by _____

Attest:

_____

FRUEHAUF CORPORATION,

by _____

Attest:

_____

Exhibit JE 107

November 1, 1968

Suemeg Company
c/o The Prentice Hall Corporation System
229 South State Street
Dover, Delaware

and

Fruehauf Corporation
10900 Harper Avenue
Detroit, Michigan 48232

Dear Sirs:

In order to induce Suemeg Company ("Suemeg") and Fruehauf Corporation ("Fruehauf") to enter into the Novation Agreement dated as of the date hereof among you, the undersigned and Railway Express Agency, Incorporated, we hereby agree that, during the term of the Agreement dated as of July 13, 1966, between REA Leasing Corporation ("Realco") and Suemeg, we will not without the prior written consent of Suemeg and Fruehauf permit any corporation controlled by us (other than Realco) to engage in the business of leasing or offering for subscription or otherwise dealing in trailers used for the carriage of freight on flat cars in trailer-on-flat-car service, except TOFC Leasing Corporation, and we will not permit TOFC Leasing Corporation to acquire any trailers

other than those in respect of which firm commitments for the acquisition thereof were in effect on July 13, 1966 and other than those Realco would itself be permitted to acquire pursuant to the terms of the Realco Agreement.

Very truly yours,

[NAME OF PURCHASER],

by _____

Exhibit C

Exhibit JE 107

ESCROW AGREEMENT dated as of November 1, 1968, among RAILWAY EXPRESS AGENCY INCORPORATED, a Delaware corporation ("Seller"), INTEGRATED CONTAINER SERVICE, INC., a Pennsylvania corporation ("Buyer"), and UNITED STATES TRUST COMPANY OF NEW YORK, a New York corporation (hereinafter called the Escrow Agent).

WHEREAS, pursuant to a Purchase Agreement dated as of October 11, 1968 (the "Agreement"), between Seller and Buyer (a copy of which is delivered to the Escrow Agent herewith), Seller has agreed to sell to Buyer 51% of the outstanding stock of REA Leasing Corporation, a Delaware corporation (hereinafter called Realco) and $2,400,000 principal amount of 5-1/2% Notes due 1970-71 of Realco, in consideration of the agreement of Buyer to pay Seller $32,400,000, all on the terms and conditions set forth in the Purchase Agreement; and

WHEREAS, the amount of that consideration was predicated on the correctness of certain representations and warranties of Seller set forth in the Agreement, and Seller has agreed to indemnify Buyer against liability in excess of $50,000 arising out of misrepresentation, breaches of warranties or failure to fulfill covenants of Seller under the Agreement; and

WHEREAS, pursuant to the Agreement, the Seller and Buyer have agreed that there shall be deposited with the Escrow Agent a certain number of shares of Realco Common Stock, which will be retained by Seller following the sale contemplated by the Agreement, as security for the above-described indemnity;

NOW, THEREFORE, in consideration of the premises the parties hereto have agreed and do hereby agree as follows:

1. This Escrow Agreement and the deposit of the Escrowed Shares (as defined in Section 2 hereof) are without prejudice to, and are not in limitation of, any obligations of Seller to Buyer in respect of any of the covenants, representations or warranties of Seller contained in the Agreement.

2. On the date hereof, Seller has delivered to the Escrow Agent, for deposit in escrow pursuant to the provisions hereof, 500 shares of Realco Common Stock (the "Escrowed Shares").

3. This Escrow Agreement has been executed and the deposit of the Escrowed Shares hereunder has been made for the purpose of providing reimbursement and indemnification to Buyer, to the extent of the amount of the proceeds of sale of the Escrowed Shares, against any liability which Seller may have to Buyer pursuant to Article 9 of the Agreement in respect of which the Seller may not have paid to the Buyer.

4. Neither Buyer nor Realco will voluntarily settle or adjust any liability, obligation or account receivable of

Realco in respect of which Buyer would be entitled to receive any proceeds of the sale of all or part of the Escrowed Shares under this Agreement, unless or until the consent in writing of Seller to such settlement or adjustment shall have been obtained, which consent shall not be unreasonably withheld. In the case of any suit, action or other legal proceeding which might result in a liability, obligation, loss or expense of the nature referred to in Section 3 hereof, Seller shall be entitled to defend, or to control the defense, at its expense, against such suit, action or proceeding.

5. Whenever there shall be delivered to the Escrow Agent either

(i) a certificate signed on behalf of Seller and Buyer certifying, or

(ii) a certified copy of an award of the arbitrators referred to in Section 7 hereof determining, or

(iii) a certified copy of a final judgment of a court of competent jurisdiction determining

(any of the foregoing documents being hereinafter called a Determination), that Buyer or Realco has incurred a liability, loss or expense on account of which Buyer shall be entitled to receive the proceeds of sale of all or part of the Escrowed Shares and specifying the amount of the liability, loss or expense so incurred, the Escrow Agent shall, to

the extent that the number of Escrowed Shares and proceeds of sale of Escrowed Shares then held by it shall be sufficient for the purpose, sell all or part of the Escrowed Shares in accordance with Section 9 hereof and pay over to Buyer the proceeds thereof, less expenses of the sale, up to the amount of the liability, loss or expense so incurred.

6. On November 1, 1970, the Escrow Agent shall deliver to Seller the Escrowed Shares and any proceeds of sale of Escrowed Shares then held by the Escrow Agent hereunder; provided, however, that if at said date there shall be pending or threatened any suit or claim which might result in liability, loss or expense against which the Escrowed Shares have been deposited as indemnity, and if Buyer shall deliver a certificate to that effect to the Escrow Agent, the Escrowed Shares and any proceeds of the sale of Escrowed Shares then held by the Escrow Agent shall not without the written consent of Buyer be delivered to Seller until such suit or claim shall have been finally determined and disposed of and Buyer shall have so certified in writing to the Escrow Agent or the Escrow Agent shall receive other evidence satisfactory tc it thereof; provided further, however, that if Seller shall deposit cash in an amount equal to the maximum liability under such suit or claim, the Escrow Agent shall deliver to Seller the Escrowed Shares and any pro-

ceeds from the sale thereof then held by the Escrow Agent hereunder. Cash so deposited by Seller shall be invested and held as provided in Section 10 hereof.

7. Any dispute as to (i) whether Buyer or Realco has incurred a liability, loss or expense on account of which Buyer shall be entitled to receive proceeds of the sale of all or part of the Escrowed Shares under this Agreement, (ii) whether a suit or claim which might result in liability, loss or expense against which the Escrowed Shares have been deposited as indemnity is pending or threatened or (iii) the amount of any such liability, loss or expense shall be submitted to, and settled by, arbitration. Such arbitration shall be effected by three arbitrators selected as hereinafter provided and shall be conducted in accordance with the Rules, existing at the date thereof, of the American Arbitration Association. The dispute shall be submitted to three arbitrators, one arbitrator being selected by Seller, one arbitrator being selected by Buyer, and the third arbitrator being selected by the two so selected by the parties, or, if they cannot agree on a third, by the American Arbitration Association. In the event that either Seller or Buyer, within one month after any notification made to it of any demand for arbitration hereunder, shall not have selected its arbitrator and given notice thereof by registered mail

to the other party, such arbitrator shall be selected by the American Arbitration Association.

8. If at any time prior to the termination of this Escrow Agreement Seller shall receive any dividend (other than a cash dividend) or other security or other property (hereinafter collectively called a Distribution) in respect of or in exchange for the Escrowed Shares (whether by way of a stock dividend, recapitalization, merger, consolidation, split-up, combination or exchange of shares or the like), they shall promptly deliver to the Escrow Agent for deposit in escrow hereunder such Distribution and the same shall be held by the Escrow Agent hereunder and shall be deemed for all purposes of this Escrow Agreement to be included in the Escrowed Shares. Seller shall be entitled to retain for its own use and benefit any cash dividends received by it in respect of the Escrowed Shares and to exercise all voting rights in respect of the Escrowed Shares.

9. In the event that the Escrow Agent shall be required to sell Escrowed Shares pursuant to Sections 5 or 6 of this Escrow Agreement, such sale shall be conducted at such time, place and manner as Buyer shall direct in writing; provided, however, that the Escrow Agent shall not sell any Escrowed Shares to Buyer or any person controlling or controlled by Buyer except for a consideration equal to the fair

market value of the shares so sold; for purposes of this sentence, the "fair market value" of Escrowed Shares shall be determined by agreement of Messrs. Kuhn, Loeb & Co. and Lehman Brothers, or, in the absence of such agreement, by such third person as Messrs. Kuhn, Loeb & Co. and Lehman Brothers shall select. The Escrow Agent shall be under no obligation with respect to the sale of Escrowed Shares except to act in accordance with the directions of Buyer given pursuant to this Section 5, and Buyer shall indemnify the Escrow Agent against any loss, liability, damage or expense incurred by the Escrow Agent in connection with any such sale.

10. If there shall be an excess of proceeds from the sale of Escrowed Shares over (a) the expenses of such sale and (b) the liability, loss or expense of Buyer in respect of which the sale was made, the Escrow Agent shall, at the written direction of Seller, invest and reinvest such excess in obligations of the United States Government, commercial paper, certificates of deposit, tax-exempt bonds or corporate bonds listed on the New York Stock Exchange. In the absence of such direction, the Escrow Agent shall invest and reinvest such excess in obligations of the United States Government. Such excess, together with all the income and gains on such investment, shall be held by the Escrow Agent under this Escrow Agreement for the purposes hereof.

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11. All notices and other instruments or papers to be sent to any party by another party hereto pursuant to this Escrow Agreement shall be sufficient if delivered or sent by registered mail to the following respective addresses:

(a) if to Seller, at 214 East 42nd Street, New York, N. Y. 10017, Attention of the President;

(b) if to Buyer, at 230 Park Avenue, New York, N. Y. 10017, Attention of the President; or

(c) if to the Escrow Agent, at 45 Wall Street, New York, N. Y. 10015.

12. The duties and responsibilities of the Escrow Agent shall be limited to those expressly set forth herein, and the Escrow Agent shall not be obliged to recognize any other agreement between any or all of the parties hereto, even though reference thereto may be made herein and whether or not it has knowledge thereof.

The Escrow Agent shall not be personally liable for any act taken or omitted hereunder if taken or omitted by it in good faith or in the exercise of its own best judgment. The Escrow Agent shall also be fully protected in relying upon any written notice, demand, certificate or document which it in good faith believes to be genuine.

The Escrow Agent shall not be responsible for the sufficiency or accuracy of the form, execution, validity or

genuineness of documents or securities now or hereafter deposited hereunder, or of any endorsement thereon, or for any lack of endorsement thereon, or for any description therein, nor shall Escrow Agent be responsible or liable in any respect on account of the identity, authority or rights of the persons executing or delivering or purporting to execute or deliver any such document, security or endorsement or these escrow instructions.

13. Any provision herein contained to the contrary notwithstanding, the Escrow Agent shall at any time and from time to time take such action hereunder with respect to the Escrowed Shares as shall be agreed to in writing by Seller and Buyer, provided that the Escrow Agent shall first be indemnified to its satisfaction with respect to any of its costs or expenses which might be involved.

14. Buyer will pay to the Escrow Agent the full amount of its fees for the services rendered by the Escrow Agent pursuant to the provisions of this Escrow Agreement and will reimburse the Escrow Agent for the full amount of its reasonable expenses incurred in connection with the performance by it of such services.

15. The obligations imposed and the rights conferred by this Escrow Agreement shall be binding upon and inure to the benefit of the respective successors and assigns

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of Seller, Buyer and the Escrow Agent.

16. This Escrow Agreement is made pursuant to and shall be construed under the laws of the State of New York.

17. United States Trust Company of New York hereby agrees to act as Escrow Agent under this Agreement.

18. This Escrow Agreement may be executed in one or more counterparts. Each of such counterparts shall for all purposes be deemed to be an original, but all such counterparts shall together constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Escrow Agreement to be signed the day and year first above written.

INTEGRATED CONTAINER SERVICE, INC.,

[Seal] by _____
President

Attest:

_____
Secretary

RAILWAY EXPRESS AGENCY, INCORPORATED,

[Seal] by _____
President

Attest:

_____
Secretary

UNITED STATES TRUST COMPANY OF NEW YORK,

[Seal] by _____
Assistant Vice President

Attest:

_____
Assistant Secretary

Exhibit D

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CERTIFICATE OF INCORPORATION

OF

INTEGRATED CONTAINER SERVICE INDUSTRIES CORPORATION

FIRST. The name of the corporation is

INTEGRATED CONTAINER SERVICE INDUSTRIES CORPORATION

SECOND. Its registered office in the State of Delaware is located at No. 100 West Tenth Street, in the City of Wilmington 99, County of New Castle. The name and address of its registered agent is the Corporation Trust Company, No. 100 West Tenth Street, Wilmington 99, Delaware.

THIRD. The name of the business, or objects or purposes to be transacted, promoted or carried on are:

(1) To carry on the business of leasing various goods, wares, merchandise, machinery and products and to do all things incident thereto.

(2) To buy, sell, produce, manufacture and dispose of goods, wares, merchandise, machinery and products and generally to engage in and conduct any form of manufacturing or mercantile enterprise not contrary to law.

(3) To purchase, hold, sell, mortgage, pledge, transfer or otherwise deal in the stock or securities of any other corporation and exercise all rights, powers and privileges of ownership.

To enter into, make and perform contracts of every kind and description with any person, firm, association, corporation, municipality, county, state, body politic or government or colony or dependency thereof.

(5) To have one or more offices, to carry on all or any of its operations and business and without restriction or limit as to amount of purchase or otherwise acquire, hold, own, mortgage, sell, convey or otherwise dispose of, real and personal property of every class and description in any of the states, districts, territories or colonies of the United States, and in any and all foreign countries, subject to the laws of such state, district, territory, colony or country.

(6) In general, to carry on any other business in connection with the foregoing, and to have and exercise all the powers conferred by the laws of Delaware upon corporations formed under the General Corporation Law of the State of Delaware, together with any powers incidental thereto, so far as such powers and privileges are necessary or convenient to the conduct, promotion or attainment of the business or purposes of the corporation.

The objects and purposes specified in the foregoing clauses shall, except where otherwise expressed, be in no wise limited or restricted by reference to, or inference from, the terms of any other clause in this certificate of incorporation, but the objects and purposes specified in each of the foregoing clauses of this article shall be regarded as independent objects and purposes.

FOURTH. The total number of shares of stock which the corporation is authorized to issue is 8,000,000.

Of such shares 7,500,000 are without par value and are classified as Common Stock and 500000 shares are to have a par value and classified as preference stock and the par value of each share of such class is $1.00.

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FOURTH. The total number of shares of stock which the corporation is authorized to issue is 8,000,000.

Of such shares 7,500,000 are ~~without~~ to have a par value and are classified as Common Stock and 600,000 shares are to have a par value and classified as Preference Stock and the par value of each share of ~~such~~ each class is $1.00.

The designations and the powers, preferences and relative participating, optional or other special rights, and qualifications, limitations or restrictions thereof, of the various classes of stock of the corporation are as follows:

(a) (1) The holder of each share of Preference Stock shall be entitled to receive an annual dividend on such share in each of the three years following issuance thereof of one-twentieth of a share of Preference Stock, payable on November 1 of each such year, provided that no such dividend shall be declared or payable on any share of Preference Stock which has been converted prior to the November 1 date on which such dividend would otherwise have been payable; and (2) at such times that dividends (other than dividends payable in Common Stock) are declared with respect to the outstanding Common Stock, the holder of each share of Preference Stock shall be entitled to receive dividends on such share in

amounts equal to the amounts of dividends which the holder of such share of Preference Stock would have received if (x) such share of Preference Stock had been converted into Common Stock immediately prior to such declaration and (y) the same per share amount of dividends actually declared on the Common Stock had been declared with respect to the Common Stock which such holder would have received on such conversion; the dividends payable pursuant to this clause (2) shall be payable immediately prior to the payment of the comparable dividends on the Common Stock and shall be paid before any dividend (other than a dividend payable in Common Stock) shall be paid on the Common Stock and before any amount shall be set aside or applied for the purchase of Common Stock or of Preference Stock.

(b) In the event of any voluntary or involuntary liquidation of the corporation, the holders of Preference Stock then outstanding shall be entitled to be paid out of the assets of the corporation available for distribution to its stockholders, whether from capital, surplus or earnings, before any payment shall be made to the holders of Common Stock, $100 for every share of their holdings of Preference Stock. In the event of any liquidation of the corporation, whether voluntary or involuntary, after payment shall have

been made to the holders of Preference Stock of the full amounts to which they shall be entitled as aforesaid, the holders of Common Stock shall be entitled to share, ratably according to the number of shares of Common Stock held by them, in all remaining assets of the corporation available for distribution to its stockholders. Neither the merger or consolidation of the corporation into or with another corporation nor the merger or consolidation of any other corporation into or with the corporation, nor the sale, transfer or lease of all or substantially all the assets of the corporation, shall be deemed to be a voluntary or involuntary liquidation of the corporation.

(c) At the discretion of the corporation, shares of Preference Stock shall be subject to redemption at any time after the expiration of a six-month period commencing with the date of issue thereof, in whole, or in part, by lot or pro rata, at $105 per share, plus any dividends declared and unpaid thereon and, if such redemption is prior to the third succeeding November 1 from the date of issue thereof, an amount per share equal to the product of $5.25 and a fraction, the numerator of which is the number of days from the immediately preceding November 1 to the date of redemption, and the denominator of which is 365, upon not less than thirty

nor more than sixty days written notice to the holders thereof, provided, however, that no notice of redemption shall be given except in accordance with the following procedure: Upon determination that the corporation intends to issue a notice of redemption, the corporation shall mail a written statement of such intent to all holders of record of Preference Stock. Such statement shall set forth the proposed date of redemption, the number of shares intended to be redeemed and the specific shares intended to be redeemed in the event that such shares are to be determined by lot. If, within 30 days of the mailing of such statement, the holders of more than 30% of the shares of Preference Stock so intended to be redeemed deposit with the corporation a statement of intent to make a sale of Preference Stock, no notice of redemption shall be given by the corporation until the expiration of the later of (1) the period required by the holders of Preference Stock so to be redeemed to convert such Preference Stock into Common Stock and to complete a public offering of such Common Stock (the period required to complete such public offering being deemed to be a period not exceeding six months after the effectiveness of a registration statement requested by holders of Preference Stock into which such Common Stock is to be converted) or (2) six months.

(d) At all meetings of shareholders the holders of the Preference Stock shall be entitled to one-tenth of one vote for each share of Preference Stock and the holders of the Common Stock shall be entitled to one vote for each share of Common Stock. The holders of the Preference Stock, voting separately as a class, shall have the right to elect one member of the Board of Directors of the corporation.

(e) Shares of Preference Stock shall be convertible, at the option of the holders thereof, at any time at the office of the corporation in New York, New York, into fully paid and nonassessable shares of Common Stock at a price of $66-2/3; for purposes of calculating the conversion ratio each share of Preference Stock shall be valued at $100 per share; provided that such conversion rights may be exercised by a holder of 30,000 (adjusted upwards for stock dividends) shares or more of Preference Stock other than holders who are financial institutions or other institutional investors only for the purposes of (1) making a registered public offering of the Common Stock received on conversion, or (2) making sales of such Common Stock exempt from the registration requirements of the Securities Act of 1933, as amended (hereinafter called the Act), by virtue of Section 4(4), or a successor provision, of the Act, and such conversion right may be

exercised by a holder of less than 30,000 (adjusted upward for stock dividends) shares of Preference Stock and by holders who are financial institutions or other institutional investors for any purpose.

The above conversion price shall be appropriately adjusted (1) on any merger, consolidation or sale of assets, (2) on any extraordinary distributions to holders of Common Stock, and (3) for any increase or decrease in the total number of shares of Common Stock issued and outstanding resulting from a split or consolidation of shares or any like capital adjustment or the payment of any stock dividend, or any other increase or decrease in the number of shares of Common Stock without receipt of fair market value therefor other than upon exercise of qualified employee stock options, or conversion of any convertible securities issued for fair market value at a conversion price at least equal to fair market value at the times of issuance of said convertible securities, or upon exercise of warrants or other rights to purchase at an exercise price which when taken together with the price at which said warrants or rights were sold by the corporation was at least equal to the fair market value of such stock at the time of issuance of said warrants and rights.

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dividend of Preference Stock shall be declared on the Preference Stock equal to 5% of that portion of originally issued shares of Preference Stock outstanding which has not been converted to Common Stock at the date of the stock dividend. Outstanding Preference Stock on the basis of the number of shares of Common Stock into which it may be converted will participate equally with Common Stock in any cash dividends declared.

FIFTH. The minimum amount of capital with which the corporation will commence business is $1,851,000.

SIXTH. The name and place of residence of the incorporator is as follows:

NAME	ADDRESS
INTEGRATED CONTAINER SERVICE, INC.	230 Park Avenue New York, New York

SEVENTH. The corporation is to have perpetual existence.

EIGHTH. The corporation shall, to the full extent permitted by Section 145 of the Delaware General Corporation Law, as amended from time to time, indemnify all persons whom it may indemnify pursuant thereto.

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NINTH. In furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized:

To make, alter or repeal the by-laws of the corporation.

To authorize and cause to be executed mortgages and liens upon the real and personal property of the corporation.

To set apart out of any of the funds of the corporation available for dividends a reserve or reserves for any proper purpose and to abolish any such reserve in the manner in which it was created.

By resolution passed by a majority of the whole board, to designate one or more committees, each committee to consist of two or more of the directors of the corporation, which, to the extent provided in the resolution or in the by-laws of the corporation, shall have and may exercise the powers of the board of directors in the management of the business and affairs of the corporation, and may authorize the seal of the corporation to be affixed to all papers which may require it. Such committee or committees shall have such name or names as may be stated in the by-laws of the corporation or as may be determined from time to time by resolution adopted by the board of directors.

When and as authorized by the affirmative vote of the holders of a majority of the stock issued and outstanding having voting power given at a stockholders' meeting duly called for that purpose, or when authorized by the written consent of the

holders of a majority of the voting stock issued and outstanding, to sell, lease, or exchange all of the property and assets of the corporation, including its good will and its corporate franchises upon such terms and conditions and for such consideration, which may be in whole or inpart shares of stock in, and/or other securities of, any other corporation or corporations, as its board of directors shall deem expedient and for the best interests of the corporation.

TENTH. Whenever a compromise or arrangement is proposed between this corporation and its creditors or any class of them and/or between this corporation and its stockholders or any class of them, any court of equitable jurisdiction within the State of Delaware may, on the application in a summary way of this corporation or any creditor or stockholder thereof, or on the application of any receiver or receivers appointed for this corporation under the provisions of Section 291 of Title 8 of the Delaware Code, order a meeting of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this corporation, as the case may be, to be summoned in such manner as the said court directs. If a majority in number representing three-fourths in value of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of this corporation as consequence of such compromise or arrangement,

the said compromise or arrangement and the said reorganization shall, if sanctioned by the court to which the said application has been made, be binding on all the creditors or class of creditors, and/or on all the stockholders or class of stockholders, of this corporation, as the case may be, and also on this corporation.

ELEVENTH. Meetings of stockholders may be held outside the State of Delaware, if the by-laws so provide. The books of the corporation may be kept (subject to any provision contained in the statutes) outside the State of Delaware at such place or places as may be designated from time to time by the board of directors or in the by-laws of the corporation. Elections of directors need not be by ballot unless the by-laws of the corporation shall so provide.

TWELFTH. The corporation reserves the right to amend, alter, change, or repeal any provision contained in this certificate of incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation.

WE, THE UNDERSIGNED, being the incorporators hereinbefore named, for the purpose of forming a corporation pursuant to the General Corporation Law of the State of Delaware, do make this certificate, hereby declaring and certifying that the facts herein

stated are true, and accordingly have hereunto set our hands and seals this 7th day of October, A.D., 1968.

M. C. Kluge (SEAL)
President

(SEAL)
Secretary

STATE OF ILLINOIS)
) ss.:
COUNTY OF COOK)

BE IT REMEMBERED That on this 7th day of October A.D., 1968, personally came before me, a Notary Public for the State of Illinois, M. C. Kluge, President, and [illegible], Secretary, of INTEGRATED CONTAINER SERVICE, INC., the parties to the foregoing Certificate of Incorporation known to me personally to be such, and acknowledged the said Certificate to be the act and deed of the signers and the facts therein stated are truly set forth.

GIVEN under my hand and seal of office the day and year above said.

Janice F. Mayo

Exhibit JE 109

Joint Exhibit 109

RAILWAY EXPRESS AGENCY, INCORPORATED

October 11, 1968

Integrated Container Service, Inc.
230 Park Avenue
New York, N. Y. 10017

Attention of Mr. Michael C. Kluge
President

Dear Sir:

We refer to your letters to us of September 23, 1968 and October 4, 1968 (hereinafter called "your Offers"), with respect to the purchase of shares of stock of REA Leasing Corporation (hereinafter called "Realco"). This letter will confirm our acceptance of the first part of your Offer No. 2. The purchase and sale of 51% of the stock of Realco pursuant to such acceptance will be effected under the Purchase Agreement dated as of October 15, 1968 (hereinafter called the Purchase Agreement), between the undersigned (hereinafter called "REA") and Integrated Container Service, Inc. (hereinafter called "ICS").

This letter will further confirm that the second part of your Offer No. 2, as amended by this letter (hereinafter called "your additional offer"), to purchase all or part of the remaining 49% of the Realco stock in exchange for convertible preference stock of the holding company,

250a
Exhibit JE 109

which will own all of the stock of ICS and the stock of Realco purchased pursuant to your Offers, containing the terms set forth in your Offers and in Exhibit A hereto (hereinafter called the "Preferred Stock") shall survive the acceptance by REA of the first part of your Offer No. 2 and the closing of the purchase by ICS of 51% of the stock of Realco in accordance therewith, and that your additional offer shall remain irrevocable until July 11, 1969. The following will set forth and confirm certain details of your additional offer: your additional offer may be accepted in whole or in part at any time and from time to time by REA by its mailing written notice thereof to ICS during the period commencing November 1, 1968, and ending at midnight July 11, 1969. The purchase price for such Realco shares shall be a number of shares of Preferred Stock determined by multiplying 440,000 by a fraction the numerator of which is the number of Realco shares to be sold to ICS on the acceptance of such offer by REA and the denominator of which is 2,450. Upon (1) an acceptance by REA of such offer, (2) delivery by REA to ICS of an opinion of counsel for REA to the effect that REA has good and marketable title to the Realco shares to be delivered to ICS, free and clear of all liens, pledges and other encumbrances, and (3) tender of the certificates for such shares by REA to ICS, with stock powers in blank, ICS shall deliver to REA a cer-

251a
Exhibit JE 109

tificate for the appropriate number of duly authorized, fully paid and nonassessable shares of Preferred Stock.

ICS hereby agrees that it will cause the election to the Board of Directors of Realco of such persons selected by REA in a number sufficient to constitute at least one-third of the Board of Directors of Realco.

ICS agrees that, without the written consent of REA, it will not (1) issue any shares of Preferred Stock except for the dividends of Preferred Stock distributed with respect to Preferred Stock, as specifically provided for in the Certificate of Incorporation of Industries (as hereinafter defined), to any person other than REA, (2) amend, alter or repeal any of the terms, preferences, special rights or powers of the Preferred Stock, (3) consolidate with or merge with or into any other corporation if the effect of such consolidation or merger would be to amend, alter or repeal such terms, preferences, special rights or powers, (4) increase the authorized amount of Preferred Stock beyond 600,000 shares, or (5) create any other class or classes of stock ranking prior to or on a parity with the Preferred Stock as to dividends or liquidation preferences.

ICS agrees that, at any time and from time to time following an acceptance by REA of all or any part of your additional offer or following the written notice of REA of

intent to accept all or any part of such offer on or after the time the registration statement hereinafter referred to* becomes effective, upon the written request of REA, ICS will, at its expense (including, without limitation, legal, accounting and printing costs, but excluding the cost of printing such number of copies of the preliminary and final prospectus as may be requested by REA for distribution by the underwriters), use its best efforts to register not less than the number of shares of ICS Common Stock (to be received by REA on conversion of the Preferred Stock) so requested to be registered under the Securities Act of 1933 (hereinafter called the "Act"), and to keep such registration effective for a period of at least nine months; provided that in no event shall ICS be required to effect more than two registrations under this paragraph. In the event of any such registration, ICS hereby agrees to indemnify REA and any underwriters for REA, and each person, if any, who controls REA or any such underwriters, within the meaning of Section 15 of the Act, against all losses, claims, damages, expenses and liabilities caused by any untrue statement of a material fact or an alleged untrue statement of a material fact contained in the registration statement or prospectus or any preliminary prospectus, or caused by any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the

statements therein not misleading, except in so far as such losses, claims, damages or liabilities are caused by any untrue statement of a material fact or an alleged untrue statement of a material fact contained in, or any material fact omitted from or alleged to be omitted from, information furnished in writing to ICS by REA expressly for use therein. REA agrees to furnish to ICS in writing such information as shall be reasonably requested by ICS for use in any such registration statement or prospectus relating to any of such shares and to indemnify ICS, its directors and officers, and each person, if any, who controls ICS within the meaning of Section 15 of the Act, against all losses, claims, damages and liabilities caused by any untrue statement of a material fact or an alleged untrue statement of a material fact contained in, or any material fact omitted from or alleged to be omitted from information so furnished in writing by such person expressly for use therein.

ICS agrees that, in addition to and not in lieu of its agreement under the preceding paragraph, if, at any time and from time to time following an acceptance by REA of all or any part of your additional offer, ICS shall determine to make application to register any security of ICS under the Act, on Form S-1 or other similar applicable form for a public underwritten sale for cash, ICS will, upon each such

determination, promptly give REA written notice thereof. If REA, within three weeks after receipt of such notice, so requests in writing, ICS will use its best efforts to: (a) register under such Act such number as may be requested of shares of Common Stock of ICS (to be received by REA on conversion of the Preferred Stock), (b) include such shares so registered in any underwritten public offering of ICS in the method adopted by and through the underwriters selected by ICS and (c) keep such registration effective for the period of time required to complete the distribution of such shares in the event of an underwritten public offering. A pro rata amount of all legal, accounting and printing costs and all other expenses of ICS in connection therewith (whether or not the offering shall be consummated) shall be reimbursed by REA to ICS.

In the event of an underwritten public offering, ICS agrees to cause to be furnished to any underwriters for REA such opinions of counsel, representation and warranties, covenants and other documents as are customarily required in underwritten public offerings.

This letter will further indicate the agreement of ICS to agree, in the event of an acceptance of your additional offer to the extent that REA shall sell more than 39% of the stock of Realco pursuant thereto, to the substitution by REA

Exhibit JE 109

of that proportion of the 440,000 shares of Preferred Stock covered by your additional offer as the number of shares of Realco stock then deposited under the Escrow Agreement dated as of November 1, 1968, referred to in the Purchase Agreement bears to 5,000.

In the event that ICS assigns its rights and privileges under the Purchase Agreement to Industries (as defined in the Purchase Agreement), ICS may assign this letter agreement to Industries provided that Industries shall assume all the obligations of ICS hereunder; and following any such assignment all references herein to ICS and to Common Stock of ICS shall be deemed to refer to Industries and to Common Stock of Industries, respectively. REA may assign its rights in whole or in part, hereunder without limitation.

If the above correctly sets forth our agreements the terms and conditions of your additional offer, please so indicate by signing at the foot hereof and returning one copy to the undersigned.

Very truly yours,

RAILWAY EXPRESS AGENCY, INCORPORATED,

by _____
President

Accepted:

INTEGRATED CONTAINER SERVICE, INC.,

by _____
President

Exhibit JE 109

Exhibit A

CERTIFICATE OF INCORPORATION

OF

INTEGRATED CONTAINER SERVICE INDUSTRIES CORPORATION

FIRST. The name of the corporation is

INTEGRATED CONTAINER SERVICE INDUSTRIES CORPORATION

SECOND. Its registered office in the State of Delaware is located at No. 100 West Tenth Street, in the City of Wilmington 99, County of New Castle. The name and address of its registered agent is the Corporation Trust Company, No. 100 West Tenth Street, Wilmington 99, Delaware.

THIRD. The name of the business, or objects or purposes to be transacted, promoted or carried on are:

To carry on the business of leasing various goods, wares, merchandise, machinery and products and to do all things incident thereto.

To buy, sell, produce, manufacture and dispose of goods, wares, merchandise, machinery and products and generally to engage in and conduct any form of manufacturing or mercantile enterprise not contrary to law.

To purchase, hold, sell, mortgage, pledge, transfer or otherwise deal in the stock or securities of any other corporation and exercise all rights, powers and privileges of ownership.

To enter into, make and perform contracts of every kind and description with any person, firm, association, corporation, municipality, county, state, body politic or government or colony or dependency thereof.

To have one or more offices, to carry on all or any of its operations and business and without restriction or limit as to amount of purchase or otherwise acquire, hold, own, mortgage, sell, convey or otherwise dispose of, real and personal property of every class and description in any of the states, districts, territories or colonies of the United States, and in any and all foreign countries, subject to the laws of such state, district, territory, colony or country.

In general, to carry on any other business in connection with the foregoing, and to have and exercise all the powers conferred by the laws of Delaware upon corporations formed under the General Corporation Law of the State of Delaware, together with any powers incidental thereto, so far as such powers and privileges are necessary or convenient to the conduct, promotion or attainment of the business or purposes of the corporation.

The objects and purposes specified in the foregoing clauses shall, except where otherwise expressed, be in no wise limited or restricted by reference to, or inference from, the terms of any other clause in this certificate of incorporation, but the objects and purposes specified in each of the foregoing clauses of this article shall be regarded as independent objects and purposes.

FOURTH. The total number of shares of stock which the corporation is authorized to issue is 8,000,000.

Of such shares 7,500,000 are without par value and are classified as Common Stock and 500000 shares are to have a par value and classified as preference stock and the par value of each share of such class is $1.00.

(1)

FOURTH. The total number of shares of stock which the corporation is authorized to issue is 8,000,000.

Of such shares 7,500,000 are ~~without~~ to have a par value and are classified as Common Stock and 600,000 shares are to have a par value and classified as Preference Stock and the par value of each share of ~~such~~ each class is $1.00.

The designations and the powers, preferences and relative participating, optional or other special rights, and qualifications, limitations or restrictions thereof, of the various classes of stock of the corporation are as follows:

(a) (1) The holder of each share of Preference Stock shall be entitled to receive an annual dividend on such share in each of the three years following issuance thereof of one-twentieth of a share of Preference Stock, payable on November 1 of each such year, provided that no such dividend shall be declared or payable on any share of Preference Stock which has been converted prior to the November 1 date on which such dividend would otherwise have been payable; and (2) at such times that dividends (other than dividends payable in Common Stock) are declared with respect to the outstanding Common Stock, the holder of each share of Preference Stock shall be entitled to receive dividends on such share in

amounts equal to the amounts of dividends which the holder of such share of Preference Stock would have received if (x) such share of Preference Stock had been converted into Common Stock immediately prior to such declaration and (y) the same per share amount of dividends actually declared on the Common Stock had been declared with respect to the Common Stock which such holder would have received on such conversion; the dividends payable pursuant to this clause (2) shall be payable immediately prior to the payment of the comparable dividends on the Common Stock and shall be paid before any dividend (other than a dividend payable in Common Stock) shall be paid on the Common Stock and before any amount shall be set aside or applied for the purchase of Common Stock or of Preference Stock.

(b) In the event of any voluntary or involuntary liquidation of the corporation, the holders of Preference Stock then outstanding shall be entitled to be paid out of the assets of the corporation available for distribution to its stockholders, whether from capital, surplus or earnings, before any payment shall be made to the holders of Common Stock, $100 for every share of their holdings of Preference Stock. In the event of any liquidation of the corporation, whether voluntary or involuntary, after payment shall have

been made to the holders of Preference Stock of the full amounts to which they shall be entitled as aforesaid, the holders of Common Stock shall be entitled to share, ratably according to the number of shares of Common Stock held by them, in all remaining assets of the corporation available for distribution to its stockholders. Neither the merger or consolidation of the corporation into or with another corporation nor the merger or consolidation of any other corporation into or with the corporation, nor the sale, transfer or lease of all or substantially all the assets of the corporation, shall be deemed to be a voluntary or involuntary liquidation of the corporation.

(c) At the discretion of the corporation, shares of Preference Stock shall be subject to redemption at any time after the expiration of a six-month period commencing with the date of issue thereof, in whole, or in part, by lot or pro rata, at $105 per share, plus any dividends declared and unpaid thereon and, if such redemption is prior to the third succeeding November 1 from the date of issue thereof, an amount per share equal to the product of $5.25 and a fraction, the numerator of which is the number of days from the immediately preceding November 1 to the date of redemption, and the denominator of which is 365, upon not less than thirty

nor more than sixty days written notice to the holders thereof, provided, however, that no notice of redemption shall be given except in accordance with the following procedure: Upon determination that the corporation intends to issue a notice of redemption, the corporation shall mail a written statement of such intent to all holders of record of Preference Stock. Such statement shall set forth the proposed date of redemption, the number of shares intended to be redeemed and the specific shares intended to be redeemed in the event that such shares are to be determined by lot. If, within 30 days of the mailing of such statement, the holders of more than 30% of the shares of Preference Stock so intended to be redeemed deposit with the corporation a statement of intent to make a sale of Preference Stock, no notice of redemption shall be given by the corporation until the expiration of the later of (1) the period required by the holders of Preference Stock so to be redeemed to convert such Preference Stock into Common Stock and to complete a public offering of such Common Stock (the period required to complete such public offering being deemed to be a period not exceeding six months after the effectiveness of a registration statement requested by holders of Preference Stock into which such Common Stock is to be converted) or (2) six months.

(d) At all meetings of shareholders the holders of the Preference Stock shall be entitled to one-tenth of one vote for each share of Preference Stock and the holders of the Common Stock shall be entitled to one vote for each share of Common Stock. The holders of the Preference Stock, voting separately as a class, shall have the right to elect one member of the Board of Directors of the corporation.

(e) Shares of Preference Stock shall be convertible, at the option of the holders thereof, at any time at the office of the corporation in New York, New York, into fully paid and nonassessable shares of Common Stock at a price of $66 2/3; for purposes of calculating the conversion ratio each share of Preference Stock shall be valued at $100 per share; provided that such conversion rights may be exercised by a holder of 30,000 (adjusted upwards for stock dividends) shares or more of Preference Stock other than holders who are financial institutions or other institutional investors only for the purposes of (1) making a registered public offering of the Common Stock received on conversion, or (2) making sales of such Common Stock exempt from the registration requirements of the Securities Act of 1933, as amended (hereinafter called the Act), by virtue of Section 4(4), or a successor provision, of the Act, and such conversion right may be

exercised by a holder of less than 30,000 (adjusted upward for stock dividends) shares of Preference Stock and by holders who are financial institutions or other institutional investor for any purpose.

The above conversion price shall be appropriately adjusted (1) on any merger, consolidation or sale of assets, (2) on any extraordinary distributions to holders of Common Stock, and (3) for any increase or decrease in the total number of shares of Common Stock issued and outstanding resulting from a split or consolidation of shares or any like capital adjustment or the payment of any stock dividend, or any other increase or decrease in the number of shares of Common Stock without receipt of fair market value therefor other than upon exercise of qualified employee stock options, or conversion of any convertible securities issued for fair market value at a conversion price at least equal to fair market value at the times of issuance of said convertible securities, or upon exercise of warrants or other rights to purchase at an exercise price which when taken together with the price at which said warrants or rights were sold by the corporation was at least equal to the fair market value of such stock at the time of issuance of said warrants and rights.

dividend of Preference Stock shall be declared on the Preference Stock equal to 5% of that portion of originally issued shares of Preference Stock outstanding which has not been converted to Common Stock at the date of the stock dividend. Outstanding Preference Stock on the basis of the number of shares of Common Stock into which it may be converted will participate equally with Common Stock in any cash dividends declared.

FIFTH. The minimum amount of capital with which the corporation will commence business is $1,851,000.00.

SIXTH. The name and place of residence of the incorporator is as follows:

NAME	ADDRESS
INTEGRATED CONTAINER SERVICE, INC.	230 Park Avenue New York, New York

SEVENTH. The corporation is to have perpetual existence.

EIGHTH. The corporation shall, to the full extent permitted by Section 145 of the Delaware General Corporation Law, as amended from time to time, indemnify all persons whom it may indemnify pursuant thereto.

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NINTH. In furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized:

To make, alter or repeal the by-laws of the corporation.

To authorize and cause to be executed mortgages and liens upon the real and personal property of the corporation.

To set apart out of any of the funds of the corporation available for dividends a reserve or reserves for any proper purpose and to abolish any such reserve in the manner in which it was created.

By resolution passed by a majority of the whole board, to designate one or more committees, each committee to consist of two or more of the directors of the corporation, which, to the extent provided in the resolution or in the by-laws of the corporation, shall have and may exercise the powers of the board of directors in the management of the business and affairs of the corporation, and may authorize the seal of the corporation to be affixed to all papers which may require it. Such committee or committees shall have such name or names as may be stated in the by-laws of the corporation or as may be determined from time to time by resolution adopted by the board of directors.

When and as authorized by the affirmative vote of the holders of a majority of the stock issued and outstanding having voting power given at a stockholders' meeting duly called for that purpose, or when authorized by the written consent of the

holders of a majority of the voting stock issued and outstanding, to sell, lease, or exchange all of the property and assets of the corporation, including its good will and its corporate franchises upon such terms and conditions and for such consideration, which may be in whole or inpart shares of stock in, and/or other securities of, any other corporation or corporations, as its board of directors shall deem expedient and for the best interests of the corporation.

TENTH. Whenever a compromise or arrangement is proposed between this corporation and its creditors or any class of them and/or between this corporation and its stockholders or any class of them, any court of equitable jurisdiction within the State of Delaware may, on the application in a summary way of this corporation or any creditor or stockholder thereof, or on the application of any receiver or receivers appointed for this corporation under the provisions of Section 291 of Title 8 of the Delaware Code, order a meeting of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this corporation, as the case may be, to be summoned in such manner as the said court directs. If a majority in number representing three-fourths in value of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of this corporation as consequence of such compromise or arrangement,

the said compromise or arrangement and the said reorganization shall, if sanctioned by the court to which the said application has been made, be binding on all the creditors or class of creditors, and/or on all the stockholders or class of stockholders, of this corporation, as the case may be, and also on this corporation.

ELEVENTH. Meetings of stockholders may be held outside the State of Delaware, if the by-laws so provide. The books of the corporation may be kept (subject to any provision contained in the statutes) outside the State of Delaware at such place or places as may be designated from time to time by the board of directors or in the by-laws of the corporation. Elections of directors need not be by ballot unless the by-laws of the corporation shall so provide.

TWELFTH. The corporation reserves the right to amend, alter, change, or repeal any provision contained in this certificate of incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation.

WE, THE UNDERSIGNED, being the incorporators hereinbefore named, for the purpose of forming a corporation pursuant to the General Corporation Law of the State of Delaware, do make this certificate, hereby declaring and certifying that the facts herein

tated are true, and accordingly have hereunto set our hands and seals this 7th day of October, A.D., 1968.

M. C. Kluge (SEAL)
President

Secretary (SEAL)

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

BE IT REMEMBERED That on this 7th day of October, A.D., 1968, personally came before me, a Notary Public for the State of Illinois, M. C. Kluge, President, and Secretary, Secretary, of INTEGRATED CONTAINER SERVICE, INC., the parties to the foregoing Certificate of Incorporation known to me personally to be such, and acknowledged the said Certificate to be the act and deed of the signers and the facts therein stated are truly set forth.

GIVEN under my hand and seal of office the day and year above said.

Janice F. Mayo

R E A EXPRESS
219 EAST 42nd ST., NEW YORK, N. Y. 10017 • (212) 557-2254

SPENCER D. MOSELEY
PRESIDENT

1-13-1-

JAN 16 1969
JAN 16 1969

January 15, 1969

Integrated Container Service
Industries Corporation
230 Park Avenue
New York, N. Y. 10017

Joint Exhibit 151
EXHIBIT HD
U. S. DIST. COURT
S. D. OF N. Y.

Attention of Michael C. Kluge, President

Dear Sirs:

We refer to the letter agreement dated October 11, 1968 (the "letter agreement"), between Integrated Container Service, Inc. ("ICS") and the undersigned ("R E A"), all of ICS's rights and obligations under the letter agreement having been assigned to and assumed by you ("ICSI"). This letter will confirm our acceptance of your continuing offer set forth in the second paragraph of the letter agreement, to the extent of 650 shares of stock of R E A Leasing Corporation ("REALCO") for 116,735 shares of ICSI Convertible Preference Stock, such acceptance to be contingent on, and to become effective at the time of, the effectiveness of the Underwriting Agreement, copies (proof of December 30, 1968) of which have been furnished R E A, to be entered into among Lehman Brothers, Kuhn, Loeb & Co., ICSI, R E A, Michael C. Kluge and Peer Pedersen. The opinion of counsel and the tender of the certificates referred to in the letter agreement shall be made at the time at which said Underwriting Agreement shall become effective.

This letter will confirm our request that, in connection with the proposed registration of shares of ICSI Common Stock under the Securities Act of 1933, ICSI use its best efforts (a) to register under said Act the 175,102 shares of ICSI Common Stock to be received by R E A on conversion of the ICSI Preference Stock referred to in the first paragraph of this letter, (b)

Dept's Exh. 32 For Ident.
DATED 2/2/74 P. CHRISTIE

BEST COPY AVAILABLE

to include said 175,102 shares of ICSI Common Stock in the proposed underwritten public offering, and (c) to keep the registration of said shares effective for the period of time required to complete the distribution of said shares in such underwritten public offering. This letter will confirm R E A's agreement to reimburse ICSI for expenses to the extent provided in the letter agreement.

Very truly yours,

RAILWAY EXPRESS AGENCY, INCORPORATED,

by _____
President

271a
Exhibit JE 164

Joint Exhibit 164
EXHIBIT 10
U. S. DIST. COURT
S. D. OF N. Y.

MORGAN GUARANTY TRUST COMPANY
OF NEW YORK
30 WEST BROADWAY, NEW YORK, N. Y. 10015

New York March 12, 1969

STOCK TRANSFER

IN REPLYING PLEASE REFER TO

Mr. Phillip R. Trimble
Cravath Swaine & Moore
One Chase Manhattan Plaza
New York, N. Y.

Dear Mr. Trimble:

Delivered herewith is a certificate for 175,102 shares of INTEGRATED CONTAINER SERVICE INDUSTRIES CORPORATION Common Stock, registered in the name of Railway Express Agency, Incorporated. Said shares were issued by reason of the conversion of 116,735 shares of Preference Stock which were presented at the office of Integrated for conversion.

It is understood that these Common shares will be presented to the undersigned tomorrow, March 13, 1969, at the closing in Jersey City. I, in turn, will give them to a representative of Pittsburgh National Bank after examination of appropriate resolutions of Integrated covering the authority to issue these Common shares upon conversion, together with a proper opinion of counsel for Integrated.

Very truly yours,

A. J. DOREMUS
Assistant Secretary

ER

V B.6

272a
Exhibit JE 165

REA EXPRESS
219 EAST 42ND ST., NEW YORK, N. Y. 10017 • (212) 557-8834

Joint Exhibit 165

PLFT'S XBT.: Id 428 Ev
DEFT'S XBT.: Id Ev
I. STERN

OFFICE OF THE
VICE PRESIDENT - FINANCE
EDWIN G. ROSS
EXHIBIT HD
U. S. DIST. COURT
S. D. OF N. Y.

March 12, 1969

Integrated Container Service Industries Corporation
230 Park Avenue
New York, N.Y. 10017

507a

Dear Sirs:

Pursuant to Article Four of the Certificate of Incorporation of Integrated Container Service Industries Corporation (hereinafter called ICSI), Railway Express Agency, Incorporated hereby tenders for conversion 116,735 shares of ICSI Proference Stock, the certificate for which is enclosed. Please issue one certificate for 175,102 shares of ICSI Common Stock in the name of Railway Express Agency, Incorporated.

Very truly yours,

RAILWAY EXPRESS AGENCY, INCORPORATED

By Edwin H Ross
Vice President - Finance

Pl's EXH. 55
DATE 2/13/74 For Ident.
P. CHRISTIE

SDM:JMC

273a
Exhibit JE 174

Joint Exhibit 174
[illegible]

April 17, 1969

Messrs. Robert G. Fuller
Robert H. Johnson
Ray H. Jordan
William J. Seyler
Board of Directors

Gentlemen:

I enclose a copy of Ed Ross' note of April 15 regarding the remaining ICNI stock which we presently hold.

You will note that he urges the sale of the stock in the first ten days of July. I concur in this and would urge that we immediately discuss the matter with The Equitable and Noreen Guaranty in order to divest ourselves of the stock and have the proceeds available on an interest-bearing basis.

Very sincerely yours,

ORIGINAL SIGNED
SPENCER D. MOSELEY

bc: Edwin G. Ross

Deft Exh. 33 For Ident.
DATE 4/20/72 P. CHRISTIE

274a
Exhibit JE 174

TO: S. D. Moseley DATE: April 15, 1969

FROM: Edwin G. Ross

SUBJECT: ICSI Corporation Stock

In line with our discussion, I suggest that the Board of Directors authorize the registration of the remaining ICSI Corporation stock. There are 484,898 shares which, at $50 a share, amounts to $24,250,000.

In addition to the registration of the stock, we will have to have the agreement of the Equitable and Morgan to substitute other security for the ICSI stock. Mr. Fuller and Mr. Trimble should probably undertake this task.

At 7% per annum, the interest on $24,250,000 would be $140,000 a month.

For tax purposes, the ICSI stock should be sold sometime between July 1, 1969 and July 10, 1969.

EGR/bc

275a
Exhibit JE 184

Joint Exhibit 184

EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

REA EXPRESS
219 EAST 42nd St., NEW YORK, N. Y. 10017 • (212) 557-2254

SPENCER D. MOSLEY
PRESIDENT

BY HAND

June 10, 1969

Integrated Container Service
Industries Corporation
230 Park Avenue
New York, N. Y. 10017

Attention of Michael C. Kluge, President

Dear Sirs:

We refer to the letter agreement dated October 11, 1968 (the "letter agreement"), between Integrated Container Service, Inc. ("ICS") and the undersigned ("REA"), all of ICS's rights and obligations under the letter agreement having been assigned to and assumed by you ("ICSI"). We intend to accept your continuing offer set forth in the second paragraph of the letter agreement, to the extent of 750 shares of stock of REA Leasing Corporation ("Realco") for 134,694 shares of ICSI Convertible Preference Stock, such acceptance to be contingent on, and to become effective at the time of, the commencement of the distribution of such Stock (or ICSI Common Stock into which such Stock is convertible). The opinion of counsel and the tender of the certificates referred to in the letter agreement shall be made at the time at which such distribution shall be commenced.

This letter will evidence our request that ICSI, at its expense, use its best efforts (a) to register under the Securities Act of 1933 the 202,041 shares of ICSI Common Stock to be received by REA on conversion of the ICSI Preference Stock referred to in the first paragraph of this letter and (b) keep the registration of said shares effective for the period of time required to complete the distribution of said shares (but not more than nine months). We will advise you as to the manner of distribution as soon as possible.

REA EXPRESS is the new name for the complete domestic and international surface and air services of Railway Express Agency

Dep't's Exh. 25 For Ident.
DATE 12-11-73 P. CHRISTIE

We further request that the registration referred to in the immediately preceding paragraph also cover the 134,694 shares of ICSI Convertible Preference Stock referred to in the first paragraph of this letter.

Very truly yours,

RAILWAY EXPRESS AGENCY, INCORPORATED,

by A. M. Morley

President

277a
Exhibit JE 185

Joint Exhibit 185
EXHIBIT
U.S. DIST. COURT
S.D. OF N.Y.

INTEGRATED CONTAINER SERVICE INDUSTRIES CORPORATION

TWO THIRTY PARK AVENUE
NEW YORK, N. Y. 10017

PLIFT'S XBT.: Id 547 Ev____
DEFT'S XBT.: Id____ Ev____
I. STERN

TELEPHONE
(212) 684-5100

June 11, 1969

REA Express
219 East 42nd Street
New York, New York 10017

Attention: Mr. Spencer D. Moseley, President

Dear Sirs:

This will acknowledge receipt of your June 10, 1969 letter, accepting in part our offer of October 11, 1968.

We would like the opportunity to consider this matter in more detail, particularly your request that we register the 134,694 shares of ICSI Convertible Preference Stock. We intend to be in touch with you by 5:00 p.m., Friday, June 13, 1969.

Very truly yours,

INTEGRATED CONTAINER SERVICE INDUSTRIES

M. C. Kluge
President

MCK/ck

278a
Exhibit JE 188

Joint Exhibit 188

J.T.C. 445 P
JUN 13 1969

INTEGRATED CONTAINER SERVICE INDUSTRIES CORPORATION

TWO THIRTY PARK AVENUE
NEW YORK, N. Y. 10017

TELEPHONE
(212) 684-5132

June 13, 1969

By Hand

R E A EXPRESS
219 East 42nd Street
New York, New York 10017

Dear Sirs:

Pursuant to your letter acceptance of June 10, 1969, this is to advise you that Integrated Container Service Industries Corporation will proceed, using its best efforts, to register under the Securities Act of 1933, the 202,041 shares of Common Stock to be received by R E A EXPRESS on conversion of the 134,694 shares of ICSI Convertible Preference Stock.

We will await to hear from you as to the manner of distribution of the Common Stock.

Very truly yours,

INTEGRATED CONTAINER SERVICE INDUSTRIES CORP.

M. C. Kluge
President

MCK/ck

279a
Exhibit JE 193

JUN 24 1969

3-13-2/1
C5

REA EXPRESS
219 EAST 42nd ST., NEW YORK, N. Y. 10017 • (212) 557-2254

SPENCER D. MOSELEY
PRESIDENT

June 23, 1969

Joint Exhibit 193
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

Integrated Container Service
Industries Corporation
230 Park Avenue
New York, N. Y. 10017

Attention of Michael C. Kluge, President

Dear Sirs:

This will confirm our agreement to sell to you, and your agreement to purchase from us, 1,000 shares of Common Stock of REA Leasing Corporation ("Realco") on the following terms and conditions:

1. The shares to be sold to you will be comprised of 500 shares of Realco Common Stock presently deposited under the escrow agreement among Railway Express Agency, Incorporated (hereinafter called "REA"), Integrated Container Service, Inc. ("ICS") and United States Trust Company of New York (said shares being hereinafter called the "Escrow Shares" and said escrow agreement being hereinafter called the "Escrow Agreement") and 500 shares of Realco Common Stock owned free and clear by REA. The aggregate purchase price for the 1,000 shares will be $4,714,290, payable by certified or bank cashier's check in New York Clearing House funds at the time of closing. The closing will take place as promptly as possible and in no event later than June 27, 1969, at the offices of United States Trust Company of New York or at such place as may be mutually agreed upon.

2. REA hereby accepts the offer to sell as of June 23, 1969 the remaining 800 shares of Realco Common Stock beneficially owned by REA ~~under-to-July-14,-1969~~, pursuant to the letter agreement dated as of October 11, 1968, between ICS and REA, and REA further agrees that it will not request a registration statement pursuant to

Duffy D. 36 For Ident.
D. 2/20/73 P. CHRISTIE

Railway Express is the new name for the complete domestic and international surface and air services of Railway Express Agency

For shares acquired with 143,673.44 shares U.S. Treasury 4% bonds having market value of $126,000 and shares otherwise pledged against margin debit of Sept. 4) shares will be released

BEST COPY AVAILABLE

the Securities Act of 1933 in respect of the underlying shares of Common Stock into which the shares of your Preference Stock (receivable upon acceptance of such offer) are convertible prior to the earlier of December 1, 1969, and the date on which the bid price of your Common Stock shall be reported by the National Quotation Bureau Inc. to have been $30 or more for ten consecutive trading days.

3. We both hereby request United States Trust Company of New York to release the Escrow Shares from the Escrow Agreement; the Escrow Shares to be delivered to you upon receipt by REA of the purchase price therefor; and to terminate the Escrow Agreement. Such termination shall not affect any liabilities REA may have under the Purchase Agreement dated as of October 11, 1968, between ICS and REA.

Please confirm that the foregoing correctly sets forth our agreement by signing and returning to us by hand the enclosed copy of this letter.

Very truly yours,

RAILWAY EXPRESS AGENCY, INCORPORATED,

by _____
President

CONFIRMED:

INTEGRATED CONTAINER SERVICE INDUSTRIES CORPORATION,

by _____
President

281a
Exhibit JE 195

Joint Exhibit 195

EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

June 23, 1969

Integrated Container Service
Industries Corporation
230 Park Avenue
New York, N. Y. 10017

KUHN, LOEB & CO.
JUL 16 1970
FILING DEPARTMENT

Attention of Michael C. Kluge, President

Dear Sirs:

This will confirm our agreement to sell to you, and your agreement to purchase from us, 1,000 shares of Common Stock of REA Leasing Corporation ("Realco") on the following terms and conditions:

1. The shares to be sold to you will be comprised of 500 shares of Realco Common Stock presently deposited under the escrow agreement among Railway Express Agency, Incorporated (hereinafter called "REA"), Integrated Container Service, Inc. ("ICS") and United States Trust Company of New York (said shares being hereinafter called the "Escrow Shares" and said escrow agreement being hereinafter called the "Escrow Agreement") and 500 shares of Realco Common Stock owned free and clear by REA. The aggregate purchase price for the 1,000 shares will be $4,714,290, payable by certified or bank cashier's check in New York Clearing House funds at the time of closing. The closing will take place as promptly as possible and in no event later than June 27, 1969, at the offices of United States Trust Company of New York or at such place as may be mutually agreed upon.

2. REA hereby accepts the offer to sell as of June 23, 1969 the remaining 800 shares of Realco Common Stock beneficially owned by REA ~~prior to July 11, 1969~~, pursuant to the letter agreement dated as of October 11, 1968, between ICS and REA, and REA further agrees that it will not request a registration statement pursuant to

the Securities Act of 1933 in respect of the underlying shares of Common Stock into which the shares of your Preference Stock (receivable upon acceptance of such offer) are convertible prior to the earlier of December 1, 1969, and the date on which the bid price of your Common Stock shall be reported by the National Quotation Bureau Inc. to have been $30 or more for ten consecutive trading days.

3. We both hereby request United States Trust Company of New York to release the Escrow Shares from the Escrow Agreement; the Escrow Shares to be delivered to you upon receipt by REA of the purchase price therefor; and to terminate the Escrow Agreement. Such termination shall not affect any liabilities REA may have under the Purchase Agreement dated as of October 11, 1968, between ICS and REA.

Please confirm that the foregoing correctly sets forth our agreement by signing and returning to us by hand the enclosed copy of this letter.

Very truly yours,

RAILWAY EXPRESS AGENCY, INCORPORATED,

by Edwin H Ross
Vice President

CONFIRMED:

INTEGRATED CONTAINER SERVICE INDUSTRIES CORPORATION,

by H.C. [illegible]
President

283a
Exhibit JE 233

IBJ:ER

Joint Exhibit 253

U. S. D. C. S. D. OF N. Y.

Mr. Alan Goldman
Vice President Finance
Interway Corp.
555 Fifth Ave.
New York, N. Y. 10017

June 14, 1971

Dear Mr. Goldman:

Confirming our verbal notification and in accordance with letter agreement dated October 11, 1968 between Interway and RDA Express Inc. please be advised that by official Board of Director action Interway is requested to register 153,041 shares of common stock. (As converted on a 1 to 1.5 ratio of preferred stock).

This will also confirm our scheduled meeting with Interway management at 9:30 AM, June 17 to discuss this matter.

Sincerely yours,

ORIGINAL SIGNED
IRVIN B. JENKINS

PL's EXH. 56 For Ident.
DATE 2/15/74 CHRISTIE

284a
Exhibit JE 234

Claims
PE

INTERWAY CORPORATION

555 FIFTH AVENUE
NEW YORK, N.Y. 10017

TELEPHONE
(212) 697-6709

JOINT EXHIBIT 234

EXHIBIT 7D
U. S. DIST. COURT
S. D. OF N. Y.

June 18, 1971

Mr. Irvin B. Jenkins
Vice President
REA Express
219 East 42nd Street
New York, New York 10017

Dear Mr. Jenkins:

In the meeting held yesterday to discuss your letter request of June 14, 1971, for the registration of 158,041 shares of Interway Common Stock, I indicated that Interway would like thirty days within which to come up with a definite alternative proposal to present to you. Towards that end, you and I have agreed to meet again at our offices on Thursday, June 24, 1971. We feel that your consent to this request, if given, should be in writing and approved by your Board of Directors since if REA's letter of June 14, 1971, is proper and sufficient under the letter agreement dated October 11, 1968, we would not want the thirty day period to be used against us in any way to suggest we did not use our best efforts to comply with your request.

We would appreciate your prompt consideration and reply.

Sincerely,

Alan I. Goldman

AIG:LD

Alan I. Goldman
Vice President - Finance

285a
Exhibit JE 235

IBJ:ER

Joint Exhibit 235

U. S. DIST. COURT
S. D. OF N. Y.

Mr. Alan I. Goldman
Vice President - Finance
Interway Corporation
555 Fifth Ave.
New York, N. Y. 10017

June 24, 1971

Dear Mr. Goldman:

In response to your letter of June 18, 1971 I have reviewed your request with the majority of the Board of Directors.

This was done as a matter of expediency since our next Board meeting is not scheduled until July 20.

The concensus of those solicited was that I should continue to press ICSI (Interway) for the registration requested in my letter dated June 14 or in lieu thereof propose a solution to the problem that could be considered by the Board

This will confirm our meeting at 9:30 this date and I look forward to your early response.

Sincerely,

ORIGINAL SIGNED
IRVIN B. JENKINS

Phx's EXH. 57 For Ident.
DATE 2/13/74.

286a
Exhibit JE 236

Mr. Burman
Please work
out-really up/
Don Hersner.
AMW

INTERWAY CORPORATION

555 FIFTH AVENUE
NEW YORK, N.Y. 10017

TELEPHONE
(212) 697-6709

July 1, 1971

Joint Exhibit 236.
EXHIBIT 75
U. S. DIST. COURT
S. D. OF N. Y.

Mr. Irvin B. Jenkins, Vice President
REA Express
219 East 42nd Street
New York, N. Y. 10017

Dear Irv:

Interway's Counsel tells me that your letter of June 14, 1971, is not sufficient for two reasons:

1) Interway's stock records indicate that its outstanding convertible preferred issued to REA for the acquisition of a portion of REALCO is currently held in the names of Carr & Co. (79, 020½ shares) and Kugler & Co. (79, 020½ shares). The written consent of these holders to your request for registration of the common shares into which the preferred is convertible is necessary.

2) The convertible preferred must be converted into common shares before further efforts can proceed to register the common stock. If you will tender the preferred certificates to this office, Interway will issue you certificates for the common shares.

I would also like to mention in connection with the alternative courses of action set forth in your letter of June 24, 1971, that in lieu of a registration, we will continue to work with you on a proposed solution to the problem for consideration by your Board at its July 20th meeting.

Sincerely,

Alan

AIG:LD

Alan I. Goldman
Vice President - Finance

✓

Mr. A. M. Wisehart --

For your information.

I. B. Jenkins
- 7/13

PL&S EXB. 58
For ...
D... 2/19/74

Exhibit JE 237

[illegible] Jenkins
[illegible] President
[illegible] Assistant to
President

REA Express

219 East 42nd Street
New York, NY 10017
Tel 212 557 2261

Joint Exhibit 237

[illegible] ID
U. S. [illegible]
S. D. [illegible]

Mr. Alan I. Goldman
Vice President - Finance
Interway Corporation
555 Fifth Avenue
New York, N. Y. 10017

July 14, 1971

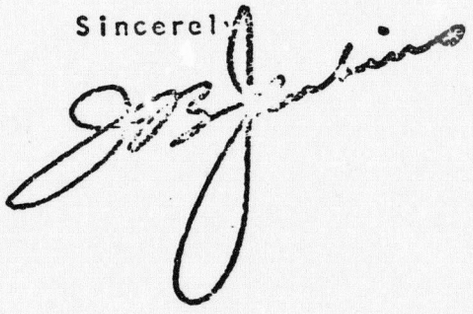
Dear Alan:

Thank you for your letter of July 1, 1971. The matter has been referred to Mr. A. M. Wisehart, our General Counsel, for appropriate response.

Mr. Robert Gintel has suggested that we meet on July 19 to discuss the possibility of a private placement of this stock. As I understand, Mr. Gintel does not have anything definite in mind but would like to discuss what we might consider as an acceptable price before he discusses the matter with his clients. Obviously, any price will be subject to Board approval.

I trust that you are continuing on your own to satisfy our request of June 14, 1971 which confirmed verbal notification on May 20, 1971.

Sincerely,



288a
Exhibit JE 238

Joint Exhibit 238

ANDERSON & ALLEGAERT
345 PARK AVENUE
NEW YORK, N.Y. 10022

AREA CODE 212
486-1464
CABLE ADDRESS
"NEWERALAW NEWYORK"

July 28, 1971

AUG 2 - 1971

Interway Corporation
555 Fifth Avenue
New York, New York 10017

Attention: Mr. Robert E. Budorick,
President

Re: REA Demand for Registration

Dear Sirs:

REA has decided that in all the circumstances it will as an exigency attempt to obtain a no-action letter from the Securities and Exchange Commission relating to its sale of Interway Common Stock. However, as you know, REA has demanded that a registration statement be filed with respect to such sales, and they expect you to proceed with all due diligence on that registration statement while they are pursuing the no-action route.

In response to your letter of July 1, 1971, we do not consider REA's demand for a registration of the shares of Interway Common Stock into which their shares of Interway Preference Stock are convertible to be in any way defective. While we do not feel it is necessary, we

are in the course of obtaining the consent of the person for whom Kugler is a nominee to the registration and conversion of the 79,020 1/2 shares now standing in that name. Since the person previously having a beneficial interest in the 79,020 1/2 shares registered in the name of its nominee, Carr & Co., no longer has such interest, and the certificate for such shares has been delivered to REA duly endorsed and is presently held by REA, there will be no occasion for obtaining any consent from any other person as regards these shares.

In connection with your eequest that the Preference Stock be first converted and then a demand made for registration, we see absolutely no basis whatsoever for such a conversion-first approach in any of the documents relating to the Preference Stock and its registration rights. You will recall, of course, that in connection with the 1969 public offering no conversion of the then ISCI Preference Stock was made until after the effective date of the registration statement.

In fact, the documents relating to conversion and registration of the Preferred Stock support the opposite conclusion, that no conversion is possible until

the shares can be sold either in a registered public offering or pursuant to an exemption from the registration requirements of the Securities Act of 1933. See specifically in this regard the language in your Amended Certificate of Incorporation, paragraph (c) of Article Fourth:

> "Shares of Preference Stock shall be convertible at the option of the holders thereof . . . provided . . . that such conversion rights may be exercised by a holder of 30,000 . . . shares or more of Preference Stock other than holders who are financial institutions or other institutional investors only for the purposes of (1) making a registered public offering of the Common Stock received on conversion or (2) making sales of such Conversion Stock exempt from the registration requirements of the Securities Act of 1933, as amended . . . by virtue of Section 4(4) or a successor provision . . . ."

We think you will agree that the most common practice in this field is to delay conversion until immediately prior to sale, either pursuant to a registration statement or otherwise. To convert prior to that time may prejudice REA's rights, and there is no reason why they should be required to give up their Preference position in order to demand a registration statement.

238

In view of this, we insist that you commence forthwith in the preparation of a registration statement pursuant to the agreements previously made between you and REA. We feel that your letter of July 1, 1971 was merely a delaying tactic and we will consider the time from REA's original letter of June 14, 1971 in calculating the time you have been taking to prepare the registration statement.

Sincerely yours,

Donald A Herner

Donald A. Herner

cc: Dennis J. Kenny, Esq.
General Counsel and
Assistant Secretary
Interway Corporation

Arthur M. Wisehart, Esq.
Vice President and
General Counsel
REA Express

292a
Exhibit JE 239

INTERWAY CORPORATION

555 FIFTH AVENUE
NEW YORK, N.Y. 10017

Joint Exhibit 239

EXHIBIT 10
U. S. DIST. COURT
S. D. OF N. Y.

TELEPHONE
(212) 697-6709

July 29, 1971

Mr. Irvin Jenkins, Vice President
REA Express
219 East 42nd Street
New York, N. Y. 10017

Dear Irv:

We have just received a letter here in New York addressed to Bob Budorick as President of Interway Corporation, with a copy to Dennis Kenny, from Donald A. Herner, whom I gather is with the law firm of Anderson & Allegaert. Although Bob is on vacation this week and next week, I was fortunate enough to reach him today at Realco's offices in Chicago because he came down from Michigan for several special conferences. I have shared with Bob the contents of the letter from Mr. Herner, and he has authorized me to respond to you.

Donald Herner has had no prior contact with Bob and no contact with me at all, but did meet with Dennis Kenny to discuss Interway's cooperation with REA in obtaining a "no-action letter" from the Securities and Exchange Commission relating to the sale of Interway common stock into which Interway preferred stock which you have represented to me is still held by REA is convertible. Based upon a previous telephone call from Art Wisehart to Dennis Kenny, we accepted that Mr. Herner was representing REA in an effort to obtain this "no-action letter". At no time have we been given to believe that Mr. Herner represents REA in any other capacity and, in fact, he does not make any mention of his engagement by REA in any capacity in his letter to Bob. We think it would be improper for us to respond to the specific points Mr. Herner makes in his letter until you establish that he has the authority to represent REA on the various matters he mentions. If you establish that he is in fact authorized to speak on REA's behalf in this matter, and that his letter correctly reflects REA's position, then we should be happy to respond in detail.

Incidentally, since Mr. Herner indicates that copies of his letter have been sent only to Art Wisehart and Dennis Kenny, I am enclosing a copy of the letter and the envelope sent to Dennis in case you have not seen them. I look forward to hearing from you soon. Best regards from Bob, Dennis and me.

Sincerely,

Alan I. Goldman
Vice President - Finance

Copies: R. Budorick
D. Kenny
A. Wisehart
D. Herner

293a
Exhibit JE 240

INTERWAY CORPORATION

555 FIFTH AVENUE
NEW YORK, N.Y. 10017

Joint Exhibit 240

EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

TELEPHONE
(212) 697-6709

July 29, 1971

REA Express
219 East 42nd Street
New York, New York 10017

Attention Irvin B. Jenkins, Vice President

Re: Claims of Interway Corporation under Purchase Agreement of October 11, 1968, for Purchase of 51% of the Stock of REALCO

Gentlemen:

The purpose of this letter is to give formal notice of the nature, scope, and amount of the claims of this Corporation against REA arising by virtue of the breach of various warranties contained in the above referred to Purchase Agreement. As you know, Interway Corporation is the new name of Integrated Container Service Industries Corporation, assignee of all right, title, and interest of Integrated Container Service, Inc., a Pennsylvania corporation, under the above Purchase Agreement.

We have in the past informally advised you of certain aspects of these claims. However, this is our first opportunity to delineate the various items and to set forth in detail the total amount of the claims and our underlying legal basis therefore. Various REALCO personnel have over the past several years expended time and effort in analyzing the REALCO June 30, 1968, financial statements and their underlying data in an effort to determine the accuracy and correctness of those financial statements. This work has been complete

We are dividing the balance of this letter into three parts — I. Contractual and Legal Basis of Claims, II. Specific Elements of Warranty Claim, and III. Calculation of Total Claims.

Plaintiff's Exh

I. CONTRACTUAL AND LEGAL BASIS OF CLAIMS

Under Paragraph 4 of the Purchase Agreement of October 11, 1968, REA warranted as follows:

> " (c) Seller has furnished to Buyer a true and correct copy of the audited consolidated balance sheet of Realco and subsidiaries as of June 30, 1968, and the related statement of income and retained earnings for the year then ended, together with the related report of Peat, Marwick, Mitchell & Co., independent public accountants. Said financial statements are true and correct. Except to the extent reflected or reserved against in the consolidated balance sheet as of June 30, 1968, Realco, as of the date thereof, had no liabilities or obligations of a nature customarily reflected in a corporate balance sheet prepared in accordance with generally accepted accounting principles, including, without limitation, any tax liabilities (i) incurred in respect of Realco's income for any period prior to the close of business on June 30, 1968, or (ii) arising out of transactions entered into or any state of facts existing prior thereto. As of June 30, 1968, Realco had no liabilities of any nature contingent or otherwise not fully reflected or reserved against in its consolidated balance sheet as of June 30, 1968.
>
> (e) Between June 30, 1968, and the Closing Date, Realco has not incurred and will not incur, any extraordinary losses or obligations or liabilities except current liabilities incurred in the ordinary and usual course of business and Realco has not made and will not make any extraordinary expenditures other than for additions and improvements to existing facilities and equipment. Between June 30, 1968, and the Closing Date, Realco has and will conduct its business, maintain its properties and keep its books and records in the usual manner.

(f) None of the accounts and notes receivable of Realco reflected in the consolidated balance sheet of Realco and subsidiaries as of June 30, 1968, are subject to counterclaims or set-offs and all of such accounts and notes receivable are (to the extent not collected since June 30, 1968) good and collectible at the aggregate recorded amounts thereof, less the amounts of the applicable reserves or allowances reflected in said consolidated balance sheet for doubtful accounts, overcharge, noncollectible items and for allowances and discounts."

It is our position that these warranties have been breached in that (a) the accounts receivable less reserves for doubtful accounts as stated in the June 1968 financials are not good and collectible in part, (b) certain items in the June 1968 financials were not true and correct, (c) certain items in the June 1968 financials were not in accordance with generally accepted accounting principles, and (d) there were, as of June 30, 1968, liabilities and obligations of REALCO not fully reflected or reserved against in the balance sheet for June 30, 1968.

It is our position that the remedies and measure of damages for the breach of these warranties are the same as for the breach of any other warranty. Consequently, for those breaches which effect the pre-tax income line of the June 30, 1968, financials, we claim monetary damages measured by the difference in the purchase price actually paid for the stock and what would have been paid by a willing purchaser if the warranted financials had been accurate and correct (hereinafter "warranty claim"). In addition, there are five items for which we are willing to accept dollar for dollar reimbursement (hereinafter "reimbursement claim").

It is also our position that our claims apply to the purchase of all the REA stock and are not limited to the 51% covered under the October 11, 1968, agreement. This is based on the letter of ICS dated September 23, 1968, wherein the warranties above referred to are made applicable to the option to purchase the remaining 49% of the REALCO stock. This letter was accepted by REA's letter of October 11, 1968.

296a
Exhibit JE 240

II. SPECIFIC ELEMENTS OF WARRANTY CLAIM

There follows a description and dollar itemization of the specific breaches of warranty in the June 1968 financials for which we are entitled to monetary damages under the warranty claim. The items for which dollar for dollar reimbursement is claimed are set forth in Section III.

a. Accounts Receivable

For the purpose of our warranty claim, we are only using the fiscal 1968 accounts receivable which we believe are uncollectible at this time. For the balance of the accounts receivable which we believe are uncollectible, we are willing to accept dollar for dollar reimbursement. Those receivables are detailed in Section III.

Uncollectible Receivables from fiscal 1968 billings (calculated by taking 1.4% of fiscal 1968 billings [$804,000 still open and uncollected as of May 31, 1971]. The 1.4% uncollectible factor was used because it represented the percentage of calendar 1965 billings still uncollected as of April 30, 1971. That balance is now an average of six years old, and in the last four months, less than $1,000 was collected on it.)	$257,000

There was no credit to the reserve account for bad debts in 1968 and consequently, the full amount of $257,000 is being used in this item of our warranty claim.

b. Adjustment in Equalization Allowance

The purpose of the equalization allowance is to credit railroad members a certain dollar amount per day per unit when certain trailers

on lease to those members go off line to another railroad. REA in October 1968 and Price Waterhouse in December 1968 adjusted this allowance reserve upwards by $48,000 for fiscal 1968 which resulted in a reduction of pre-tax income by $48,000 for fiscal 1968.

c. Expenses of Real Services, Inc.

Approximately $10,000 in the June 1968 financials for the establishment of this corporation was shown as prepaid expense. Subsequently, but prior to the closing under the Purchase Agreement, an additional $75,000 was treated in the same manner. This total amount should have been reflected in the Profit and Loss Statement, the effect of which would have been to reduce pre-tax income by that amount for fiscal 1968. We are entitled to claim for the entire $85,000 by virtue of the warranty contained in paragraph 4(e).

d. Trailer Repair Reserve

Approximately $100,000 of trailer repair bills for fiscal 1968, over and above the reserve for such repairs, were not received until after June 30, 1968. This amount should have been reflected in the Profit and Loss Statement, the effect of which would have been to reduce pre-tax income by that amount for fiscal 1968.

e. Lease Payments Charged to Prepaid Expenses

Our investigation indicated that at least two payments to National Bank of North America totaling $203,000 due and paid during fiscal 1968 were charged to prepaid expenses even though the equipment was in REALCO's possession, although not in revenue service at the time of payment. This amount should have been reflected in the Profit and Loss Statement, the effect of which would have been to reduce pre-tax income for fiscal 1968 by that amount.

III. CALCULATION OF TOTAL CLAIMS

It is our position that all of the foregoing items in the full amounts

stated directly affect the pre-tax income line of the June 30, 1968, financials. The total effect is to reduce the pre-tax income for fiscal 1968 by the aggregate of the aforementioned five items.

We have previously stated our position that the measure of damages for the breach of the warranties in the October 11, 1968, agreement is the difference between what was paid for REALCO and what would have been paid for REALCO had the financials been as warranted.

This leads us to consider first the total amount paid for the purchase of REALCO. The total price to be paid for REALCO under the October 11, 1968, agreement and the various letter agreements using values as of October 11, 1968, was

Cash	$30,000,000 for 51%
440,000 preference shares convertible at 1.5 into common = 660,000 at then approximate market price of $64 per share	42,240,000 for 49%
TOTAL	$72,240,000

It is our position that the total price paid for REALCO must be calculated on the date the agreement was made, without regard to subsequent event, i.e. decline in common stock price.

The total purchase price of $72,240,000, on the basis of REALCO reported earnings for fiscal 1968, results in a price earnings ratio of 29.9, i.e. $72,240,000 divided by $2,416,000.

Alternatively one might argue that the total price paid for REALCO ought to be calculated in terms of the cash realized and currently realizable by REA. While this is not our position, we set it forth to demonstrate the magnitude of our claim even when a conservative analysis more favorable to REA is used. On this basis, the price paid was

Cash	$30,000,000 for 51%
Cash (March 6, 1969, sale of 175,102 shares of common stock into	7,968,452 for 13%

which 116,735 shares of preference stock received January 15, 1969, were converted [after deducting underwriting discounts and commissions and other selling expenses].)	
Cash (June 27, 1969, sale of 1,000 shares of REALCO stock.)	$ 4,714,290 for 20%
237,062 shares of common stock into which 158,041 shares of preference stock presently held would be converted. (Valued at 33 1/3% discount for current market price of $12 because of their restricted marketability.)	1,896,496 for 16%
TOTAL	$44,479,238

The total purchase price of $44,479,238 calculated in this manner results in a price earnings ratio of 18.4 on the basis of REALCO reported earnings for fiscal 1968, i.e. $44,479,238 divided by $2,416,000.

On the basis of the analysis in Section II, the earnings of REALCO for fiscal 1968 should have been stated as $1,889,911 determined as follows:

Fiscal 1968	
Pre-tax Income from Financial Statements	$ 3,176,457
Less: Deductions described in Section II	693,000
Corrected Pre-tax Income for Fiscal 1968	2,483,457
Times: Tax Rate used in Fiscal 1968 Financial Statements	23.9%
Corrected Income Taxes for Fiscal 1968	593,546

Corrected Pre-tax Income for Fiscal 1968	$2,483,457
Less: Corrected Income Taxes for Fiscal 1968	593,546
Corrected Earnings for Fiscal 1968	1,889,911

Applying the 29.9 P/E ratio to these earnings results in a total purchase price that should have been paid, had the warranties not been breached of $56,508,339. Deducting this amount from that actually paid results in monetary damages in the amount of $15,731,661 on the warranty claim.

Applying the alternate 18.4 P/E ratio to these earnings results in a purchase price that should have been paid, had the warranties not been breached, of $34,774,362. Deducting this amount from the alternate price paid results in monetary damages in the amount of $9,704,876 on the warranty claim.

In addition, REALCO/Interway will accept dollar for dollar reimbursement from REA for the following five items.

a. Accounts Receivable

Unidentified Receivables (Difference between accounting controls and detailed ledgers—never identified by customer.)	$ 37,000
Actual write-offs (Including bankruptcies of Penn Central and Tennessee Central.)	82,000
Anticipated write-off Central Railroad of New Jersey and other railroads in bankruptcy (We are fairly confident at this time that no dividend will be recovered in these bankruptcies and consequently deem this amount uncollectible.)	111,000

Calendar 1965 open receivable at April 30, 1971	$ 50,000	(equals 1.4% of 1965 gross revenue)
Calendar 1966 open receivable at May 31, 1971, was $267,000. But by applying 1.4% to gross calendar 1966 revenue (see Page 4), this is reduced to	160,000	
First half of calendar 1967 open receivable at May 31, 1971, was $397,000. But by applying 1.4% to first half of gross calendar 1967 revenue (see Page 4), this is reduced to	103,000	
TOTAL	$543,000	
LESS RESERVE	153,000	
GRAND TOTAL	$390,000	

b. Unaccountable Inventory

The June 1968 financials reflect a current asset in the amount of $11,000 for inventory listed in Account 1300, Material and Supplies. (As near as we can determine, this inventory item was intended to be office supplies.) However, we have not been able to account for this inventory and consequently must view it as nonexistent as of June 30, 1968.

c. Unaccountable Equipment Assets

The June 1968 financials reflect in Account 1310, Trailer Parts, a fixed asset in the amount $75,000. (As near as we can determine, this fixed asset item was intended to be signs, tires, etc., for use on newly purchased trailers.) However, we have not been able to trace these assets to any specific purchase order or orders for trailers and consequently must view them as nonexistent as of June 30, 1968.

d. Pension Fund Liability

We have had an actuarial analysis made of the unfunded liability

of REALCO under the REALCO Pension Plan supplemental to Railroad Retirement. The amount of this liability for the period up to the purchase of 51% of REALCO is $43,000. This amount was not disclosed on the fiscal 1968 financials as a liability.

e. Federal Taxes

The amount of REALCO's Federal tax liability for fiscal 1968 was paid to REA by REALCO. Subsequently, the tax was recomputed, resulting in a reduction in the total tax liability of $13,000. This amount should have been paid back to REALCO.

In summary, the total amount of the claims of this corporation under the Purchase Agreement and letter agreements for the purchase of REALCO is $16,263,661 ($15,731,661 under the warranty claim plus $532,000 under the reimbursement claim). Under the alternate calculation, the total amount of the claim is $10,236,876 ($9,704,876 under the warranty claim plus $532,000 under the reimbursement claim).

We would look forward to a meeting at your earliest convenience to discuss these claims further.

Very truly yours,

Dennis J. Kenny
General Counsel

DJK/ck

303a
Exhibit JE 241

J. B. Jenkins
President and
Executive Assistant to
President

REA Express

219 East 42nd Street
New York, NY 10017
Tel 212 557 2261

fil
REA

Joint Exhibit 241
EXHIBIT 40
U. S. DIST. COURT
S. D. OF N. Y.

Mr. Alan Goldman
Interway Corp.
555 Fifth Ave.
New York, N. Y. 10017

August 4, 1971

Dear Mr. Goldman:

With reference to your letter of July 29 please be advised that we have engaged the law firm of Anderson & Allegaert to properly represent REA in all matters pertaining to the obtaining of a no action letter, conversion of ICSI stock and the registration of same.

Your cooperation in this matter will be appreciated.

Sincerely,

J. B. Jenkins

RECEIVED
AUG 5 19..

304a
Exhibit JE 242

INTERWAY CORPORATION

Joint Exhibit 242

EXHIBIT AD
U. S. DIST. COURT
S. D. OF N. Y.

555 FIFTH AVENUE
NEW YORK, N.Y. 10017

TELEPHONE
(212) 697-6709

August 12, 1971

Anderson & Allegart
345 Park Avenue
New York, N. Y. 10022

Attention: Donald A. Herner

Gentlemen:

We are in receipt of your letter of July 28, 1971 addressed to the attention of Mr. Robert E. Budorick. Our delay in responding was occassioned by the necessity of our first ascertaining from REA, your authority to represent REA in matters other than its attempt to secure a "no-action" letter from the S. E. C. As you know, Mr. Wisehart of REA gave me your name and advised me that you had been retained to make efforts to secure a "no-action" letter. I was given no indication that the scope of your representation extended to the matters referred to in your July 28th letter. Mr. Irvin-B. Jenkins of REA has now responded by letter of August 4th advising us that your firm has been retained to represent REA in all matters pertaining to "the obtaining of a no-action letter, conversion of ICSI stock and the registration of same".

We have carefully reviewed the contents of your letter. While we will agree that REA's pursuit of a no-action letter does not in any way obviate any obligation Interway may have to register the common stock into which the presently held preference stock is convertible, we do maintain that we are entitled to demand that REA furnish a proper notice of request to register. In our letter of July 1, 1971 to REA we pointed out why the request was not proper. Our position remains the same.

We look forward to the receipt of the consent by the person for whom Kugler & Co. is nominee. We would also want to see the certificates issued in the name of Carr & Co. to satisfy ourselves that Carr & Co. no longer has any interest in the shares represented thereby and that they are now held by REA.

We must take issue with your position on our requirement that REA first convert before requesting registration. The March 1969 offering was not made at the request of REA but rather at the initiative of Integrated Container Service Industries. As required under our letter agreement with REA we offered REA the right to join in as a selling shareholder. Even if REA has backed out of that registration and decided not to sell the common stock, ICSI would have gone ahead with that registration for its own benefit. Since we do not intend at this time to make a public offering, the costs and expenses of any registration requested by REA would be solely for the benefit of REA. If REA were to back out and not convert to common, those costs and expenses would not be recoverable. For this reason, we see no analogy between the March, 1969 offering and REA's present request.

We must also differ with you on your interpretation of our Certificate of Incorporation when you state that "no conversion is possible until the shares can be sold..." The language of the Certificate provides that "Preference Stock shall be convertible... only for purposes of (1) making a registered public offering of the Common Stock received on conversion..." Contrary to your position we interpret this language to mean that the preference stock is convertible if the intent of the holder is to register the common into which the preference stock is converted and consequently conversion only requires the intent to register the common stock, which in this case can be manifested by an appropriate request for registration.

Even assuming you are correct on what the most common practice is in this field, that practice would not apply in this case because of the language of the Certificate of Incorporation and the fact that Interway must pay the costs of any REA registration request.

242

306a
Exhibit JE 242

We do not see how REA's rights are prejudiced by this procedure. On the other hand we can see how Interway could be prejudiced under your suggested procedure if REA decided not to convert after Interway had made substantial expenditures prepairing the registration material.

We are disturbed by your suggestion that our letter of July 1, 1971 was a delaying tactic. It was, we feel, a prompt response to REA's letter of June 14, 1971, pointing out the deficiencies of that letter. We would appreciate further word from you as to how and when these conditions will be met.

I would also be interested in knowing the status of REA's no-action letter.

Very truly yours,

Dennis J. Kenny
General Counsel

DJK:ab

307a
Exhibit JE 242a

From	Subject	Date
A. M. Wischart	I. B. Jenkins	ICSI Stock	8/13/71

Ex 13

Joint Exhibit 242a

REA Express Memorandum

EXHIBIT 13
U. S. DIST. COURT
S. D. OF N. Y.

In response to your memo of August 2 I agree that we should pursue our request for registration very vigorously. I would expect to do so directly with Mr. Alan Goldman and it is my understanding that Don Herner of Gene Anderson's office will continue to apply pressure from that angle.

Incidentally, Bill McCurdy called yesterday to advise that they will not be able to provide ICSI stock for the unqualified approval to convert preferred stock to common at this time. However, they were in complete agreement that we should go forward with the registration effort and they would provide the approval co-incident with the sale or registration of our stock. He indicated that the preferred stock has a $100 liquidated value whereas the common would have none and in view of our financial position they would wish to protect their interest.

IBJ

308a
Exhibit JE 243

Joint Exhibit 243.

EXHIBIT AD
U. S. DIST. COURT
S. D. OF N. Y.

Memorandum from . . . DONALD A. HERNER

Mr. Wiseheart,

Here is a copy of the interview letter I received today.

Don Herner
8/16/71

309a
Exhibit JE 243

3-12-82
243

INTERWAY CORPORATION

555 FIFTH AVENUE
NEW YORK, N.Y. 10017

ANDERSON & ALLEGART

AUG 16 1971

TELEPHONE
(212) 697-0709

August 12, 1971

Anderson & Allegart
345 Park Avenue
New York, N. Y. 10022

Attention: Donald A. Herner

Gentlemen:

We are in receipt of your letter of July 28, 1971 addressed to the attention of Mr. Robert E. Budorick. Our delay in responding was occassioned by the necessity of our first ascertaining from REA, your authority to represent REA in matters other than its attempt to secure a "no-action" letter from the S. E. C. As you know, Mr. Wisehart of REA gave me your name and advised me that you had been retained to make efforts to secure a "no-action" letter. I was given no indication that the scope of your representation extended to the matters referred to in your July 28th letter. Mr. Irvin B. Jenkins of REA has now responded by letter of August 4th advising us that your firm has been retained to represent REA in all matters pertaining to "the obtaining of a no-action letter, conversion of ICSI stock and the registration of same".

We have carefully reviewed the contents of your letter. While we will agree that REA's pursuit of a no-action letter does not in any way obviate any obligation Interway may have to register the common stock into which the presently held preference stock is convertible, we do maintain that we are entitled to demand that REA furnish a proper notice of request to register. In our letter of July 1, 1971 to REA we pointed out why the request was not proper. Our position remains the same.

INTERWAY CORPORATION

243

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We must take issue with your position on our requirement that REA first convert before requesting registration. The March 1969 offering was not made at the request of REA but rather at the initiative of Integrated Container Service Industries. As required under our letter agreement with REA we offered REA the right to join in as a selling shareholder. Even if REA has backed out of that registration and decided not to sell the common stock, ICSI would have gone ahead with that registration for its own benefit. Since we do not intend at this time to make a public offering, the costs and expenses of any registration requested by REA would be solely for the benefit of REA. If REA were to back out and not convert to common, those costs and expenses would not be recoverable. For this reason, we see no analogy between the March, 1969 offering and REA's present request.

We must also differ with you on your interpretation of our Certificate of Incorporation when you state that "no conversion is possible until the shares can be sold..." The language of the Certificate provides that "Preference Stock shall be convertible... only for purposes of (1) making a registered public offering of the Common Stock received on conversion..." Contrary to your position we interpret this language to mean that the preference stock is convertible if the intent of the holder is to register the common into which the preference stock is converted and consequently conversion only requires the intent to register the common stock, which in this case can be manifested by an appropriate request for registration.

Even assuming you are correct on what the most common practice is in this field, that practice would not apply in this case because of the language of the Certificate of Incorporation and the fact that Interway must pay the costs of any REA registration request.

311a
Exhibit JE 243

We do not see how REA's rights are prejudiced by this procedure. On the other hand we can see how Interway could be prejudiced under your suggested procedure if REA decided not to convert after Interway had made substantial expenditures prepairing the registration material.

We are disturbed by your suggestion that our letter of July 1, 1971 was a delaying tactic. It was, we feel, a prompt response to REA's letter of June 14, 1971, pointing out the deficiencies of that letter. We would appreciate further word from you as to how and when these conditions will be met.

I would also be interested in knowing the status of REA's no-action letter.

Very truly yours,

Dennis J. Kenny
General Counsel

DJK:ab

312a
Exhibit JE 244

Joint Exhibit 244

ANDERSON & ALLEGAERT
345 PARK AVENUE
NEW YORK, N.Y. 10022

EXHIBIT D
U. S. DIST. COURT
S. D. OF

AREA CODE 212
486-1484

CABLE ADDRESS
"NEWERALAW NEWYORK"

1933 Act/Section 4(2)
1933 Act/Section 4(4)

August 31, 1971

Securities and Exchange Commission
Division of Corporation Finance
Office of Chief Counsel
500 North Capitol Street, N. W.
Washington, D. C. 20549

Re: Interway Corporation
formerly Integrated Container Service
Industries Corporation)
REA Express, Inc.

Dear Sirs:

This letter is being submitted on behalf of REA Express, Inc. ("REA") in support of its request for a "no-action" letter with respect to the proposed sale by it of all or part of the 237,061 shares of Common Stock, par value $1.00 per share ("Common Stock") of Interway Corporation, a Delaware corporation ("Interway"), into which they plan to convert the 158,041 shares of Preference Stock, par value $1.00 per share of Interway presently held by REA.

Acquisition of Interway Stock

REA acquired the Interway Preference Stock in the following transactions.

Pursuant to correspondence and to two Agreements dated October 11, 1968 REA agreed to sell to Integrated Container Service, Inc. ("ICS") a 51% interest in one of REA's wholly owned subsidiaries, REA Leasing Corporation ("REALCO"), in exchange for a cash consideration and the option to sell the remaining 49% interest in REALCO for shares of Preference Stock of ICS. The option to sell the remaining 49% interest was to remain effective until July 11, 1969 (see Attachments A, B, C, and D).

Subsequent to the October 11, 1968 transaction, ICS underwent a series of corporate transactions pursuant to which it became the wholly owned subsidiary of Integrated Container Service Industries Corporation ("Industries"). Industries was a holding company for both ICS and the 51% interest in REALCO. ICS assigned its rights and obligations under the various agreements with REA to Industries, and subsequent to that time REA became entitled to sell its remaining interest in REALCO to Industries in exchange for Preference Stock of Industries. In early 1971 Industries changed its name to Interway Corporation, and in order to avoid confusion Interway will be used as the name throughout.

In January 1969 REA notified Interway that it desired to sell an additional 13% of the REALCO stock to Interway pursuant to the above-described arrangement. The sale was made effective January 1969, and REA received as consideration 175,102 shares of Interway Preference Stock.

Subsequently, in March of 1969 Interway made a public offering of 550,102 shares of its Common Stock, of which 375,000 shares were sold for the account of Interway and 175,102 were sold for the account of REA, being the shares of Common Stock into which the shares acquired by REA in January 1969 were converted. (File No. 2-31258)

The public offering made in March 1969 has become the subject matter of several lawsuits which have been consolidated into the action, Weinberger et al. v. Integrated Container Service Industries Corporation et al. (U.S. District Court, S.D.N.Y., 69 Civ. 2284) REA is one of the defendants in this case. The amended complaint alleges misrepresentations and omissions to state material facts in the prospectus used in the offering. This suit is still pending with no answer having yet been filed by defendants.

In June of 1969, REA made a new agreement to sell its remaining interest in REALCO to Interway. A portion of that remaining interest was sold for cash and the remainder was exchanged for 143,673 shares of Interway Preference Stock. Subsequent to June 1969 REA has received an additional 14,368 shares of Preference Stock as dividends pursuant to the terms of the Preference Stock. If REA continues to hold the Preference Stock until November 1, 1971 it will receive a dividend of an additional 7184 shares of Preference Stock. Part of the stock is presently registered in the name of Kugler & Co. as nominee for one of REA's lenders.

Description of Interway Stock

Pursuant to the terms of the Preference Stock it may be converted into shares of Common Stock:

> ...at the option of the holders thereof, at any time at the office of the corporation in New York, New York, into fully paid and non-assessable shares of Common Stock at a price of $66 2/3.
>
> for purposes of calculating the conversion ratio each share of Preference Stock shall be valued at $100.00 per share; and, provided, further, that such conversion rights may be exercised by a holder of 30,000 (adjusted upwards for stock dividends) shares or more of Preference Stock other than holders who are financial institutions or other institutional investors only for the purposes of (1) making a registered public offering of the Common Stock

received on conversion, or (2) making sales or such Common Stock exempt from the registration requirements of the Securities Act of 1933, as amended (hereinafter called the Act), by virtue of Section 4 (4) or a successor provision, of the Act and such conversion rights may be exercised by a holder of less than 30,000 (adjusted upwards for stock dividends) shares of Preference stock for any purpose and by holders who are financial institutions or other institutional investors for any purpose.

The agreement between REA and Interway provides for registration rights with respect to the Common Stock into which the Preference Stock may be converted. REA may either include such shares in a registration statement filed voluntarily by Interway, as was done in March 1969 or REA may demand that Interway file a registration statement covering the shares. REA has made a demand that Interway file a registration statement, but to this date Interway has unduly delayed in complying with that demand. The correspondence enclosed as Attachment E clearly indicates that Interway has no intention of complying with the registration provisions in the foreseeable future. REA is making every effort to enforce its registration rights but presently sees no course short of litigation which might be successful. Litigation, while a possible solution to the registration problem, does not in any way solve, because of the delays involved, REA's current needs as more fully described below.

Interway

Interway Common Stock is presently traded on the national over-the-counter market. Certain selling shareholders of Interway had an original public offering of 200,000 shares of its Common Stock under the name Integrated Container Service, Inc. on May 16, 1968. (File No. 2-28657) On March 6, 1969 Interway had a second public offering described above whereby Interway sold 375,000 shares of Common Stock for its own account and REA sold 175,102 shares.

Interway advises that it has been promptly complying with the reporting requirements set forth in Sections 13 and 15(d) of the Securities Exchange Act of 1934, as amended, and with the proxy solicitation rules found in Section 14 thereof, since May 1968. In addition Interway provides to its stockholders and the public annual reports including audited financial statements and quarterly reports including unaudited financial statements.

Assuming the conversion of the Preference Stock held by REA, Interway has outstanding 2,787,163 shares of its Common Stock. The REA holdings of 237,061 equal slightly more than 8% of this total. (If REA holds all of the Preference Stock until November 1, 1971 it will receive, as stated

above, a dividend equal to 7184 shares of Preference Stock which upon conversion would give REA 247,857 shares of Common Stock out of a then outstanding 2,797,939 shares, or 8.8%.)

Reason and Rationale for Sale

REA desires to sell some or all of its shares of Interway Common Stock in order to generate funds to meet its critical need for cash. While the sale of Interway stock will not completely solve the cash requirements, the Interway stock is one of REA's few potentially marketable assets.

REA has undergone a central, profound change of circumstances from those existing or foreseeable in June 1969 on the basis of which it acquired Interway stock as the purchase price for its remaining shares in Realco, a wholly-owned profitable subsidiary. The company in mid-1971 finds itself coping with a recessionary economy and a critical cash situation. The Interstate Commerce Commission has just completed an audit of REA's financial situation and can provide full details concerning the result.

New management was assembled at REA during the first six months of 1969. Several outside investors joined

with the new management in acquiring approximately 98% ownership of REA through the instrumentality of a newly formed REA Holding Corporation in the summer of 1969.

Because of a variety of unforeseen factors, REA's situation has changed materially from what it was when the Interway stock was acquired. In the fiscal year ending June 30, 1969, REA had a loss of approximately $43,000,000. Further, in the last twelve months, in addition to the recession, REA (1) suffered a nation-wide strike by the Brotherhood of Railroad and Airline Clerks in April 1971 and (2) in a six week period beginning in late July 1970 an embargo by the airlines of all Air Express shipments hung over the company and its shippers, resulting in a sharp and substantial drop in air express revenues not yet fully recaptured. After operating at break-even or better during the first six months of the tenure of the new group, i.e., July 1 - December 31, 1969, REA suffered losses for the full fiscal year ended June 30, 1970 in the approximate amount of $7,000,000. In the year ended June 30, 1971 losses are expected to exceed $15,000,000. These losses have put REA in a very serious cash and working capital position.

It should be noted that REA has held the Interway stock in excess of two years. While REA has attempted to enforce registration rights and Interway has been non-cooperative as above described, REA does not believe that it can be successful in sufficient time for this recourse to be of any use in the current critical situation.

REA proposes, then, to convert its holdings of Interway Preference Stock and to sell the underlying Common Stock in the over-the-counter market in normal brokerage transactions. If it becomes relevant, REA would consider limiting its present sales to less than all of its holding.

Based on the foregoing we would appreciate your advising whether the Staff of the Commission would recommend to the Commission that no action be taken if sales of the Interway Common Stock were made on the over-the-counter market in normal brokerage transactions. If there is any further information that you may require with respect to this matter, please call Mr. Donald A. Herner of this office collect (212) 486-1484.

Sincerely,

Attachments

cc: Hon. George M. Stafford, Chairman
Interstate Commerce Commission
Washington, D.C. 20423

321a
Exhibit JE 244 Hachment A

Integrated Container Service, Inc.

230 PARK AVENUE • NEW YORK, N. Y. 10017

PHONE (212) 684-5132 • CABLE INTCONSERV NEW YORK • TELEX-12-6040

September 23, 1968

Mr. Ray H. Jordan, President
Railway Express Agency, Incorporated
219 East 42nd Street
New York, New York 10017

Dear Mr. Jordan:

Pursuant to your invitation of August 16, 1968, and a Resolution of the Board of Directors of Integrated Container Service, Inc., we submit herewith two alternative offers of ICS to purchase in one case 51% of the issued and outstanding stock of REA Leasing Corporation, and in the other not less than 51% and up to 100% of such stock, and in both cases to purchase the subordinated indebtedness of REALCO to REA in the principal amount of $2,400,000.

We wish at the outset to describe briefly our Company. ICS is in the business of leasing intermodal cargo containers through an international pool of carriers. Its leasing arrangements and operations are in many ways similar to REALCO's. ICS's containers and pooling services, however, are designed for all forms of surface transportation on a worldwide scale as contrasted with REALCO's U.S. railroad-piggyback orientated equipment and services. A prospectus (Exhibit "A") prepared for the recent and first public sale of ICS common stock is enclosed. It details ICS's origins and growth. Also enclosed is the six months report to shareholders (Exhibit "B") which provides the Company's most recently published financial information.

ICS has established a leading position in international container leasing and pooling. Recognition of this fact is evidenced by the following quotation from the September 14, 1968, issue of the British publication, The Economist, which issue was devoted to a survey of the international container business:

BEST COPY AVAILABLE

"But the biggest prize for the bankers would be a world wide container owning and leasing company which buys and leases containers and rents them to users around the world, taking the responsibility of passing its containers on from one user to the next. But it looks as if the cream of that cake has already been taken by Integrated Container Service, Inc, an American company that went public this year and is now turning itself into a truly international organisation with locally established branch companies and offices around the world."

ICS is interested in REALCO because it believes that their respective operations are complementary. A union of the two companies would achieve the objective of creating a worldwide intermodal container and trailer leasing and pooling business. This combination will benefit REA and its shareholders as well as ICS. ICS's worldwide pool of containers will enable REALCO to extend the scope of its service to U.S. railroads. Similarly, the inclusion of REALCO's equipment in the activities of the ICS pool will increase the ability of U.S. land carriers to participate in the international movement of freight.

The business of ICS has expanded rapidly. It is expected that this growth will continue. Based upon the current demand for the Company's equipment and services, ICS anticipates that equipment in use in its pool will at least double in 1969. ICS presently has an $11,000,000 line of credit with a consortium of banking institutions headed by the Pittsburgh National Bank, including The First Pennsylvania Banking and Trust Company, Bank of America National Trust & Savings Association, The National Shawmut Bank of Boston, and the Schroder Trust Company as participants. It is currently negotiating with the Pittsburgh National Bank for an additional $25,000,000 line of credit, for additional equipment purchases, which will provide ICS with a total of over $36,000,000 of bank credit. In addition, the Company has and will continue to have lines of credit with foreign manufacturers of container equipment.

ICS submits the following two offers:

OFFER NO. 1

ICS offers to purchase 51% of the issued and outstanding shares of REALCO, and the $2,400,000 subordinated obligation of REALCO to REA for a total cash consideration of $32,400,000.

10-4-
accepting (pull...

OFFER NO. 2

ICS offers to purchase 51% of the issued and outstanding shares of REALCO, and the $2,400,000 subordinated obligation of REALCO to REA for a total cash consideration of $32,400,000, and further offers to purchase all or any portion of the remaining 49% of the issued and outstanding shares of REALCO, and as consideration therefor, will issue to REA $40,000,000, or such lesser proportionate amount in the event of the purchase of less than all of the remaining shares, in convertible preference shares of a holding company ("ICS Holding Company") to be incorporated for the purpose of holding 100% of the issued and outstanding shares of ICS and all of the shares of REALCO to be purchased hereunder.

Description of Proposed Convertible Preference Stock

1. Preference: In the event of liquidation, preferred over Common Stock at the rate of $100.00 per share. The shares will be assigned a nominal par value.

2. Redemption: Redeemable in whole or in part at any time after six months at 105% of the liquidating value of the shares.

3. Conversion Price ($65 to $75): Convertible in whole or in part into Common Stock at a price equal to the average mean between the closing bid and ask price as reported and confirmed by the National Quotation Bureau for the five trading days immediately preceding the closing date of the acquisition of REALCO stock, but in no event less than $65.00 per share, nor more than $75.00 per share. Assuming the issuance of the full $40,000,000 of Preference Shares, the conversion thereof at $65.00 per share would result in the issuance to REALCO shareholders of 615,384 common shares and 533,333 common shares at $75.00 per share.

4. Dividend: In each of the first three 12-month periods after issue, a dividend on the Preference Stock will be paid in kind equal to 5% per annum of the number of Preference Shares originally issued.

5. Conversion: The Preference Stock will be convertible in whole or in part into the Common Stock of the ICS Holding Company only pursuant to a public sale of such shares by REA or any subsequent holder thereof.

6. Voting Rights: Each Preference Share shall be entitled to 1/10th of one vote.

7. Registration Rights: Upon 90 days notice by the holders of 30% or more of the Preference Stock, ICS Holding Company will convert such shares into Common Stock and will register an offering of such Common Stock, but not more than twice, at the Company's expense. At the request of any preference shareholder, ICS Holding Company will convert Preference Stock into Common Stock for inclusion in any registration statement it may file.

The foregoing alternative offers are subject to the following terms and conditions:

1. Creditors' Arrangements: ICS will enter into an undertaking with respect to REALCO's creditors' agreements as described in your letter of August 16, 1968, providing for the continuance of such loans until March 31, 1969, and containing the same obligations as those of REA, and will further agree to cause REALCO to consent to the substitution of ICS for REA under the default provisions of such loan agreements.

2. Warranties and Covenants: In addition to the warranties REA has agreed to make as set forth in paragraph 3 of your invitation of August 16, 1968, ICS requests REA to make the following warranties and covenants:

(a) That none of the accounts and notes receivable of REALCO is subject to counterclaims or set-offs and all of such accounts and notes receivable are good and collectible at the aggregate recorded amounts thereof, less the amounts of the applicable reserves for doubtful accounts, overcharge, noncollectible items and for allowances and discounts.

(b) That except to the extent reflected or reserved against in the consolidated balance sheet at June 30, 1968, REALCO as of the date thereof, had no liabilities or obligations of a nature customarily reflected in a corporate balance sheet prepared in accordance with generally accepted accounting principles, including, without limitation, any tax liabilities (i) incurred in respect to REALCO's income for any period prior to the close of business on June 30, 1968, or (ii) arising out of transactions entered into or any state of facts existing prior thereto. REALCO has no liabilities of any nature contingent or otherwise or any amount not fully reflected or reserved against in its consolidated balance sheet at June 30, 1968, except for liabilities incurred since June 30, 1968, in the ordinary course of business.

(c) That REALCO has continued to conduct its business, maintain its properties, and keep its books and records in its usual manner since June 30, 1968.

(d) That REALCO is not a party to any pending or threatened litigation which, if adversely determined, would materially and adversely affect the business, operations or properties of REALCO.

(e) That REALCO has not incurred since June 30, 1968, any extraordinary losses or incurred or become liable for any obligations or liabilities except current liabilities incurred in the ordinary and usual course of business or made any extraordinary expenditures other than for additions and improvements to existing facilities and equipment.

(f) That REA covenants and agrees that for a period of five years it will not directly or indirectly engage in the business of leasing trailers or containers to others on a per diem, or on a short or long term basis, or provide a "pooling" arrangement to freight carriers for the interchange among carriers of trailers or containers or engage in any business or aspect thereof which would be competitive with the per diem and short and long term container or trailer leasing business and interchange services of ICS or be competitive with the present business of REALCO.

3. Indemnification and Hold Harmless: REA shall indemnify and hold ICS harmless against and in respect of losses in excess of an aggregate of $50,000 by reason of:

(a) Any and all damage or deficiency resulting from any misrepresentation, breach of warranty or failure to fulfill any covenant on the part of REA or from any misrepresentation in or material omission from any certificate, opinion or other instrument furnished or to be furnished to ICS by REA or REALCO.

(b) Any and all actions, suits, proceedings, demands, assessments, judgments, costs and legal and other expenses incident to any of the foregoing in 3(a) above.

REA will reimburse ICS on demand for any payments by ICS with respect to any liability, obligation or claim to which the foregoing indemnity relates, provided ICS has notified REA in writing promptly upon the assertion of any such claim or demand by others and has afforded REA the opportunity to defend against any such claim or demand. To secure the foregoing right of reimbursement, REA, at the time of closing, will

deposit with a mutually acceptable escrow agent for a period of two years, 10% of the issued and outstanding stock of REALCO Common Stock, provided that in the event REA accepts ICS Offer No. 2, then REA shall deposit with such escrow agent the proportionate amount of securities received from ICS for such 10% of REALCO Common Stock. If a claim to which the foregoing indemnity relates has been asserted but no payment has been made by REA prior to the expiration of the aforesaid escrow period, then ICS shall be entitled to have the securities deposited in escrow to be held by the escrow agent until final determination of such claim. If such claim has not been resolved within 12 months subsequent to the expiration of the escrow period, the escrow agent shall be authorized to sell all or such portion of said shares as is required to generate proceeds sufficient to satisfy said claim, and the escrow agent shall then pay said proceeds to claimant or I.C.S., as the case may be.

Although your invitation of August 16, 1968, suggests that proof of the availability of funds to ICS to pay the offered purchase price is required only upon the request of REA, ICS wishes to confirm the availability to it of such funds on or before the closing date. We have, therefore, attached as Exhibits "C" and "D", respectively, the following:

1. Letter of Commitment dated September 11, 1968, from the Continental Illinois National Bank and Trust Company of Chicago, committing that bank to furnish $20,000,000 to ICS for purposes of acquiring 51% or more of REALCO stock.

2. Letter of Lehman Brothers dated September 20, 1968, stating that it has received commitments to purchase $17,500,000 of subordinated convertible notes to be issued by the ICS Holding Company, which commitments are conditioned upon the acquisition by ICS Holding Company of 51% or more of REALCO stock.

It should be noted that the commitment letter of the Continental Illinois National Bank and Trust Company of Chicago gives practical assurance of the acceptability of ICS as a substitute for REA under the REALCO revolving credit arrangements with the same bank.

In order to assist REA in making an evaluation of the financial impact or value of the proposed transaction, ICS has prepared pro forma income statements for the current and next fiscal years of ICS and REALCO,

reflecting the consequences of the Company's two offers.

Certain assumptions were made for purposes of preparing these exhibits. Based on its forecasts, its experience and evaluation of the market available to it, ICS anticipates net earnings after taxes in excess of $2,000,000 for the current calendar year and in excess of $4,000,000 in 1969. REALCO's earnings are set forth on the assumptions that sales from fiscal 1969 will increase 20%, and that the company will realize earnings after taxes equal to 18% of sales. We have assumed similar growth for the next fiscal year.

In compliance with REA's invitation, ICS hereby represents, covenants and warrants that the purchase of REALCO's shares under either Offer No. 1 or Offer No. 2 and the purchase of the subordinated debt is for its own account and not with a view to or for sale in connection with any distribution thereof. This offer is unconditional and irrevocable through October 15, 1968, and the terms and conditions of your invitation are hereby accepted and made a part of our offers.

ICS stands ready to furnish such additional information, clarification or elaboration of its proposals as may be desired by REA. Without in any way qualifying the irrevocability or unconditional nature of these offers, we wish to advise that ICS is prepared, within the basic framework of the offers herewith submitted, to explore with REA representatives any variations thereof that may be more suitable to REA or that may conform more readily to REA's needs.

Very truly yours,

INTEGRATED CONTAINER SERVICE, INC.

M.C.K.

Michael C. Kluge, President

MCK:cap
encls.

230 PARK AVENUE • NEW YORK, N. Y. 10017
PHONE (212) 599-6767 • CABLE INTCONFERV NEW YORK • TELEX 12-6040

Attachment B

October 4, 1968

Mr. Ray H. Jordan, President
Railway Express Agency, Incorporated
219 East 42nd Street
New York, New York 10017

Dear Mr. Jordan:

This letter is in response to REA's request that ICS clarify a provision of the indemnification requirement of its offer as set forth commencing on page 5 of our letter of September 23, 1968, expressly confirm certain implied terms of its offer, and in addition, that it consider certain modifications to its proposals.

It is our understanding that a question has been raised as to the amount of REALCO stock, in the case of Offer No. 1, or in the case of Offer No. 2, the amount of ICS Holding Company's Preference Shares which ICS would require REA to deposit in escrow in order to secure its right of indemnification. It was intended that the 10% amount as stated, be applicable in the event either offer were accepted. In other words, with respect to Offer No. 1, REA is requested to deposit in escrow from the 49% of the REALCO stock retained by it, the number of shares of such stock which equals 10% of the total issued and outstanding shares of said corporation. Should REA accept Offer No. 2, it is requested to deposit in escrow, ICS Holding Company Preference Shares in an amount equal in value to 10% of the sum of the cash and the liquidation value of the Preference Shares received by it as consideration for the REALCO stock. For example, if, as proposed, ICS acquires all of the issued and outstanding shares of REALCO for a cash consideration of $30,000,000 and $40,000,000 of ICS Holding Company's Preference Shares, REA would be required to escrow that number of ICS Preference Shares having a value upon liquidation of $7,000,000. If REA should determine to accept ICS's offer to purchase less than all of the remaining 49% of REALCO stock, REA might then deposit either REALCO stock (10% of the total issued and outstanding shares of said corporation) or ICS Holding Company's Preference Shares having a liquidation value of $7,000,000.

In explanation of the foregoing, we suggest that in purchasing REALCO stock under either Offer No. 1 or Offer No. 2, ICS is exposed to certain risks from which it is entitled to be protected. Since these risks are basically the same in either event, ICS is willing to accept the same protection even though its investment is significantly greater in the case of Offer No. 2.

It is also our understanding that some concern has been expressed with respect to the possibility, in the event Offer No. 2 is accepted, that during the period prior to conversion by REA of ICS Holding Company's Preference Shares, REA's equity position in the Holding Company might be diluted through common stock splits, dividends, or other capital adjustments. Although not expressly stated in our offer, we wish to assure you that no such possibility of dilution was intended to be left open and that ICS would propose to include in the formal agreement incorporating the terms of its Offer No. 2 a provision as follows:

> "The conversion price established for the Preference Shares in the manner provided shall be proportionately adjusted for any increase or decrease in the total number of issued and outstanding shares of Common Stock of ICS Holding Company as of the closing date resulting from a split or consolidation of shares or any like capital adjustment, or the payment of any stock dividend, or any other increase or decrease in the number of shares of Common Stock of ICS Holding Company without receipt of fair market value therefor."

It was also intended that the Preference Shares participate equally on the basis of the number of shares of Common Stock into which the Preference Shares are then convertible, with the Common Stock of the Holding Company in any cash dividends that might be declared.

In addition to the foregoing clarifications, REA has requested that ICS consider certain modifications to its offer and the following represent those modifications which are acceptable to ICS,

1. ICS hereby amends the redemption provision with respect to the Preference Shares in Offer No. 2 by providing that after receipt from REA of a request to register an offering of Common Stock as provided in paragraph 7 and

until such registration is completed, ICS shall not have the right to redeem the Preference Shares.

2. "ICS hereby amends its Offer No. 2 by granting to REA the right to convert the Preference Shares into Common Stock for purposes of making sales thereof to the public pursuant to Rule 154 under the Federal Securities Act of 1933 as amended and further grants to REA the right to make private placements of the Preference Shares without restriction to financial institutions and to other purchasers, provided that with respect to the latter the number of shares sold to any single purchaser shall not exceed $3,000,000 in liquidation value of such Preference Shares."

3. ICS hereby amends its proposal by adding as an alternative offer the following:

> ICS offers to purchase 100% of the issued and outstanding shares of REALCO, the $2,400,000 subordinated obligation of REALCO to REA and the covenant of REA not to compete for a period of 10 years for a total cash consideration of $32,400,000 (of which amount $15,000,000 shall be allocated as consideration for the covenant not to compete) and the issuance to REA of $40,000,000 in Convertible Preference Shares of the ICS Holding Company. (The Preference Shares shall be the same as described under ICS's Offer No. 2 as set forth in our letter of September 23, 1968 and as amended by this letter.)

4. ICS hereby amends its Offer No. 2 as set forth on page 3 of our letter of September 23, 1968 by adding the following:

> "provided that if REA accepts the foregoing cash offer for 51% of the REALCO stock and the $2,400,000 subordinated obligation of REALCO to REA, the further offer of ICS to purchase all or part of the remaining 49% of the REALCO stock for the securities of the Holding Company on the terms stated shall remain irrevocable until July 11, 1969 and may be exercised by delivery of written notice at any time prior thereto."

As was agreed at the meeting of ICS and REA representatives on October 4, 1968, it is understood that if the derivative tax problems can be successfully resolved ICS's offer to purchase the remaining 49% of its REALCO stock shall remain irrevocable until December 31, 1969 but ICS shall be given the option during the period from July 1 to July 31, 1969 to require REA's sale to it of the remaining 49% of the REALCO stock on the terms stated.

All other terms of Offer No. 2 shall remain the same except that the determinative date for the establishment of the conversion price within the stated minimum and maximum shall be the date of exercise by REA of its option to accept ICS's offer to purchase the remaining 49% of REALCO stock rather than the closing date of the cash purchase of 51% of the REALCO stock.

ICS will be pleased to provide any further clarification or elaboration of ICS's proposals which you may desire, and will give consideration to further modifications which may be suggested.

Very truly yours,

INTEGRATED CONTAINER SERVICE, INC.

M. C. Kluge

Michael C. Kluge, President

MCK/at

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Attachment C

RAILWAY EXPRESS AGENCY, INCORPORATED

October 11, 1968

Integrated Container Service, Inc.
230 Park Avenue
New York, N. Y. 10017

Attention of Mr. Michael C. Kluge
President

Dear Sir:

We refer to your letters to us of September 23, 1968 and October 4, 1968 (hereinafter called "your Offers"), with respect to the purchase of shares of stock of REA Leasing Corporation (hereinafter called "Realco"). This letter will confirm our acceptance of the first part of your Offer No. 2. The purchase and sale of 51% of the stock of Realco pursuant to such acceptance will be effected under the Purchase Agreement dated as of October 15, 1968 (hereinafter called the Purchase Agreement), between the undersigned (hereinafter called "REA") and Integrated Container Service, Inc. (hereinafter called "ICS").

This letter will further confirm that the second part of your Offer No. 2, as amended by this letter (hereinafter called "your additional offer"), to purchase all or part of the remaining 49% of the Realco stock in exchange for convertible preference stock of the holding company,

which will own all of the stock of ICS and the stock of Realco purchased pursuant to your Offers, containing the terms set forth in your Offers and in Exhibit A hereto (hereinafter called the "Preferred Stock") shall survive the acceptance by REA of the first part of your Offer No. 2 and the closing of the purchase by ICS of 51% of the stock of Realco in accordance therewith, and that your additional offer shall remain irrevocable until July 11, 1969. The following will set forth and confirm certain details of your additional offer: your additional offer may be accepted in whole or in part at any time and from time to time by REA by its mailing written notice thereof to ICS during the period commencing November 1, 1968, and ending at midnight July 11, 1969. The purchase price for such Realco shares shall be a number of shares of Preferred Stock determined by multiplying 440,000 by a fraction the numerator of which is the number of Realco shares to be sold to ICS on the acceptance of such offer by REA and the denominator of which is 2,450. Upon (1) an acceptance by REA of such offer, (2) delivery by REA to ICS of an opinion of counsel for REA to the effect that REA has good and marketable title to the Realco shares to be delivered to ICS, free and clear of all liens, pledges and other encumbrances, and (3) tender of the certificates for such shares by REA to ICS, with stock powers in blank, ICS shall deliver to REA a cer-

tificate for the appropriate number of duly authorized, fully paid and nonassessable shares of Preferred Stock.

ICS hereby agrees that it will cause the election to the Board of Directors of Realco of such persons selected by REA in a number sufficient to constitute at least one-third of the Board of Directors of Realco.

ICS agrees that, without the written consent of REA, it will not (1) issue any shares of Preferred Stock (except for the dividends of Preferred Stock distributed with respect to Preferred Stock, as specifically provided for in the Certificate of Incorporation of Industries (as hereinafter defined), to any person other than REA, (2) amend, alter or repeal any of the terms, preferences, special rights or powers of the Preferred Stock, (3) consolidate with or merge with or into any other corporation if the effect of such consolidation or merger would be to amend, alter or repeal such terms, preferences, special rights or powers, (4) increase the authorized amount of Preferred Stock beyond 600,000 shares, or (5) create any other class or classes of stock ranking prior to or on a parity with the Preferred Stock as to dividends or liquidation preferences.

ICS agrees that, at any time and from time to time following an acceptance by REA of all or any part of your additional offer or following the written notice of REA of

intent to accept all or any part of such offer on or after the time the registration statement hereinafter referred to becomes effective, upon the written request of REA, ICS will, at its expense (including, without limitation, legal, accounting and printing costs, but excluding the cost of printing such number of copies of the preliminary and final prospectus as may be requested by REA for distribution by the underwriters), use its best efforts to register not less than the number of shares of ICS Common Stock (to be received by REA on conversion of the Preferred Stock) so requested to be registered under the Securities Act of 1933 (hereinafter called the "Act"), and to keep such registration effective for a period of at least nine months; provided that in no event shall ICS be required to effect more than two registrations under this paragraph. In the event of any such registration, ICS hereby agrees to indemnify REA and any underwriters for REA, and each person, if any, who controls REA or any such underwriters, within the meaning of Section 15 of the Act, against all losses, claims, damages, expenses and liabilities caused by any untrue statement of a material fact or an alleged untrue statement of a material fact contained in the registration statement or prospectus or any preliminary prospectus, or caused by any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the

statements therein not misleading, except in so far as such losses, claims, damages or liabilities are caused by any untrue statement of a material fact or an alleged untrue statement of a material fact contained in, or any material fact omitted from or alleged to be omitted from, information furnished in writing to ICS by REA expressly for use therein. REA agrees to furnish to ICS in writing such information as shall be reasonably requested by ICS for use in any such registration statement or prospectus relating to any of such shares and to indemnify ICS, its directors and officers, and each person, if any, who controls ICS within the meaning of Section 15 of the Act, against all losses, claims, damages and liabilities caused by any untrue statement of a material fact or an alleged untrue statement of a material fact contained in, or any material fact omitted from or alleged to be omitted from information so furnished in writing by such person expressly for use therein.

ICS agrees that, in addition to and not in lieu of its agreement under the preceding paragraph, if, at any time and from time to time following an acceptance by REA of all or any part of your additional offer, ICS shall determine to make application to register any security of ICS under the Act, on Form S-1 or other similar applicable form for a public underwritten sale for cash, ICS will, upon each such

determination, promptly give REA written notice thereof. If REA, within three weeks after receipt of such notice, so requests in writing, ICS will use its best efforts to: (a) register under such Act such number as may be requested of shares of Common Stock of ICS (to be received by REA on conversion of the Preferred Stock), (b) include such shares so registered in any underwritten public offering of ICS in the method adopted by and through the underwriters selected by ICS and (c) keep such registration effective for the period of time required to complete the distribution of such shares in the event of an underwritten public offering. A pro rata amount of all legal, accounting and printing costs and all other expenses of ICS in connection therewith (whether or not the offering shall be consummated) shall be reimbursed by REA to ICS.

In the event of an underwritten public offering, ICS agrees to cause to be furnished to any underwriters for REA such opinions of counsel, representation and warranties, covenants and other documents as are customarily required in underwritten public offerings.

This letter will further indicate the agreement of ICS to agree, in the event of an acceptance of your additional offer to the extent that REA shall sell more than 39% of the stock of Realco pursuant thereto, to the substitution by REA

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of that proportion of the 440,000 shares of Preferred Stock covered by your additional offer as the number of shares of Realco stock then deposited under the Escrow Agreement dated as of November 1, 1968, referred to in the Purchase Agreement bears to 5,000.

In the event that ICS assigns its rights and privileges under the Purchase Agreement to Industries (as defined in the Purchase Agreement), ICS may assign this letter agreement to Industries provided that Industries shall assume all the obligations of ICS hereunder; and following any such assignment all references herein to ICS and to Common Stock of ICS shall be deemed to refer to Industries and to Common Stock of Industries, respectively. REA may assign its rights in whole or in part, hereunder without limitation.

If the above correctly sets forth our agreements the terms and conditions of your additional offer, please so indicate by signing at the foot hereof and returning one copy to the undersigned.

Very truly yours,

RAILWAY EXPRESS AGENCY, INCORPORATED,

by _____
President

Accepted:

INTEGRATED CONTAINER SERVICE, INC.,

by _____
President

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PURCHASE AGREEMENT dated as of October 11, 1968, between INTEGRATED CONTAINER SERVICE, INC., a Pennsylvania corporation (hereinafter called Buyer), and RAILWAY EXPRESS AGENCY, INCORPORATED, a Delaware corporation (hereinafter called Seller).

Seller desires to sell to Buyer, and Buyer desires to purchase from Seller, 51% of the issued and outstanding stock of REA Leasing Corporation, a Delaware corporation (hereinafter called Realco), consisting of 2,550 shares of Common Stock representing 51% of the outstanding shares of capital stock of Realco (hereinafter called the Shares), and $2,400,000 principal amount of 5-1/2% Notes due 1970-71 of Realco (hereinafter called the Subordinated Debt), all upon the terms and subject to the conditions hereinafter set forth. Accordingly, the parties hereto agree as follows:

1. Purchase and Sale. (a) On the Closing Date referred to below, and upon the terms and subject to the conditions set forth in this Agreement, Seller hereby agrees to sell, assign and transfer to Buyer, and Buyer hereby agrees to purchase and accept from Seller, the Shares and the Subordinated Debt, free and clear of all liens, pledges and encumbrances.

(b) On the Closing Date Seller will deliver to Buyer (i) a certificate representing the Shares, duly endorsed in blank for transfer, or with an appropriate stock power in blank attached, with all necessary state transfer tax stamps affixed or provided for, and (ii) the Subordinated Debt.

(c) The purchase price for the Shares shall be $30,000,000 and the purchase price for the Subordinated Debt shall be $2,400,000 plus accrued interest from October 1, 1968.

2. Payment of Purchase Price. On the Closing Date Buyer shall deliver to Seller a certified or bank cashier's check payable in New York Clearing House funds to Seller in the amount of $32,400,000 plus accrued interest on the Subordinated Debt from October 1, 1968. Buyer has delivered to Seller security satisfactory to Seller in an amount of $5,000,000, which shall be forfeited to Seller if Buyer defaults on its obligation to make payment of the purchase price on November 1, 1968. If Buyer has fulfilled its obligation to make payment of the purchase price on November 1, 1968, such security shall be returned to Buyer.

3. The Closing Date. The purchase and sale provided for in this Agreement shall take place at the offices of Seller in New York, New York, at 10:00 a.m., on November 1, 1968 (herein called the Closing Date).

4. Representations of Seller. Seller represents,

warrants and agrees as follows:

(a) Realco is a duly organized and validly existing corporation under the laws of the State of Delaware.

(b) Seller is the lawful owner of the Shares and of the Subordinated Debt and has, and at the Closing Date will have, full power and authority to sell and deliver the same to Buyer, free and clear of all liens and encumbrances.

(c) Seller has furnished to Buyer a true and correct copy of the audited consolidated balance sheet of Realco and subsidiaries, as of June 30, 1968, and the related statement of income and retained earnings for the year then ended, together with the related report of Peat, Marwick, Mitchell & Co., independent public accountants. Said financial statements are true and correct. Except to the extent reflected or reserved against in the consolidated balance sheet as of June 30, 1968, Realco, as of the date thereof, had no liabilities or obligations of a nature customarily reflected in a corporate balance sheet prepared in accordance with generally accepted accounting principles, including, without limitation, any tax liabilities (i) incurred in respect of Realco's income for any period prior to the close of business on June 30, 1968, or (ii) arising out of transactions entered into or any state of facts existing prior thereto. As of June 30, 1968, Realco had no liabilities of any nature contingent or otherwise not fully reflected or reserved against in its consolidated balance sheet as of June 30, 1968.

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(d) There are no actions, suits or proceedings pending or threatened against Realco which, if adversely determined, would materially and adversely affect the business, operations or properties of Realco.

(e) Between June 30, 1968 and the Closing Date, Realco has not incurred and will not incur, any extraordinary losses or obligations or liabilities except current liabilities incurred in the ordinary and usual course of business and Realco has not made and will not make any extraordinary expenditures other than for additions and improvements to existing facilities and equipment. Between June 30, 1968 and the Closing Date, Realco has and will conduct its business, maintain its properties and keep its books and records in the usual manner.

(f) None of the accounts and notes receivable of Realco reflected in the consolidated balance sheet of Realco and subsidiaries as of June 30, 1968, are subject to counterclaims or set-offs and all of such accounts and notes receivable are (to the extent not collected since June 30, 1968) good and collectible at the aggregate recorded amounts thereof, less the amounts of the applicable reserves or allowances reflected in said consolidated balance sheet for doubtful accounts, overcharge, noncollectible items and for allowances and discounts.

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5. Conditions to Obligations of Buyer. The obligations of Buyer under this Agreement are, at the option of Buyer, subject to the conditions that:

(a) All the terms, covenants and conditions of this Agreement to be complied with and performed by Seller on or before the Closing Date shall have been fully complied with and performed.

(b) Buyer shall have received an opinion of counsel for Seller dated the Closing Date to the effect that:

(i) Realco is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware;

(ii) Realco has a duly authorized capital stock consisting of 25,000 shares of Common Stock, no par value, of which only 5,000 shares have been issued;

(iii) the Shares are validly issued, fully paid and non-assessable and the Seller has transferred good and marketable title thereto to the Buyer free and clear of all liens and encumbrances; and

(iv) this Agreement has been duly authorized, executed and delivered by or on behalf of Seller and is the legal, valid and binding obligation of Seller in accordance with its terms.

6. Conditions to Obligations of Seller. The

obligations of Seller under this Agreement are subject to the conditions that:

(a) All the terms, covenants and conditions of this Agreement to be complied with and performed by Buyer on or before the Closing Date shall have been fully complied with and performed.

(b) On the Closing Date, Seller shall have received an opinion of counsel for Buyer, to the effect that (i) Buyer is a corporation duly organized and validly existing in good standing under the laws of the state of its incorporation; (ii) the execution, delivery and performance of this Agreement by Buyer has been duly authorized by all requisite corporate action; and (iii) this Agreement has been duly executed and delivered by or on behalf of Buyer and constitutes a legal, valid and binding obligation of Buyer in accordance with its terms.

(c) Buyer shall have entered into agreements, substantially in the forms attached hereto as Exhibit B, effective on the Closing Date, with the creditors or lessors of Realco named in said agreements; provided, however, that, if the Buyer has not so entered into an agreement or agreements with one or more of such creditors or lessors, Seller may at its option waive compliance with this condition and Buyer in such case will indemnify and hold harmless Seller in respect of

any loss, liability or expense which Seller may incur by reason of the undertakings of REA for which the Buyer is not substituted for REA under such agreement or agreements.

7. Additional Undertakings. (a) Seller covenants and agrees that for a period of five years after the Closing Date it will not directly or indirectly engage in the business of leasing trailers or containers to others on a per diem, or on a short or long term, basis or provide a "pooling" arrangement to freight carriers for the interchange among carriers of trailers or containers or engage in any business or aspect thereof which would be competitive with the per diem and short and long term container or trailer leasing business and interchange services of Buyer or be competitive with the present business of Realco.

(b) Seller covenants and agrees that it will continue to provide its historical maintenance services to Realco for a reasonable period of time on a reasonable basis.

(c) Buyer represents and warrants that it is purchasing the Shares and the Subordinated Debt under this Agreement for its own account for investment and not with a view to, or for sale in connection with, any distribution thereof.

8. Indemnification. Seller further agrees to indemnify and hold Buyer harmless from any and against all liability, loss or expense in excess of an aggregate of $50,000 arising

out of any misrepresentations, breaches of warranties or failure to fulfill any covenants of Seller under this Agreement or arising out of any misrepresentation or material omission from any certificate, opinion or other instrument furnished to Buyer by Seller or Realco under this Agreement. Seller will reimburse Buyer on demand for any payments by Buyer with respect to any liability, obligation or claim to which the foregoing indemnity relates, provided Buyer has notified Seller in writing promptly upon the assertion of any such claim or demand by others and has afforded Seller the opportunity to defend against any such claim or demand. To secure the foregoing right of reimbursement, Seller, at the time of closing, will deposit with United States Trust Company of New York, as escrow agent, or with such other escrow agent as may be mutually acceptable, 500 shares of the issued and outstanding Common Stock of Realco owned by REA pursuant to an agreement in substantially the form of Exhibit C hereto.

9. Expenses. Seller and Buyer shall each pay its own expenses in connection with this Agreement and the transactions contemplated hereby.

10. Miscellaneous. (a) Each party represents and warrants that there are no claims for brokerage commissions or finders' fees in connection with the transactions contemplated by this Agreement resulting from any action taken by it.

Each of the parties agrees to exonerate, indemnify, and hold harmless the other in respect of any and all losses sustained by the other as a result of liability to any broker or finder on the basis of any arrangement or agreement made by or on behalf of such party.

(b) This Agreement cannot be orally changed, amended or terminated.

(c) This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, provided that neither party shall assign any of its rights or privileges hereunder without the prior written consent of the other, except that Buyer may assign its rights or privileges hereunder to Integrated Container Service Industries Corporation (hereinafter called Industries), provided that (i) Industries shall have been duly organized under a Certificate of Incorporation, a copy of which is attached hereto as Exhibit D, and shall be validly existing and in good standing under the laws of the State of Delaware, (ii) Industries shall have assumed all the obligations of Buyer hereunder, (iii) Industries shall own 100% of the outstanding Common Stock of Buyer on the Closing Date, free and clear of all liens and encumbrances, and (iv) on the Closing Date, Seller shall have received an opinion of counsel for Industries, to the effect that (x) Industries is a corporation duly organized under a Certificate of Incorporation, a copy of which is attached

hereto as Exhibit D, and validly existing and in good standing under the laws of Delaware; (y) Industries owns 100% of the outstanding stock of Buyer, ~~free and clear of all liens and encumbrances~~; and (z) the assumption of the obligations of Buyer and the performance of this Agreement by Industries has been duly authorized by all requisite corporate action of Industries, and the obligations of Buyer hereunder, after such assumption, constitute legal, valid and binding obligations of Industries in accordance with their terms.

(d) All notices, consents, requests, instructions, approvals and other communications provided for herein and all legal process in regard hereto shall be validly given, made or served if in writing and delivered personally or sent by registered mail, postage prepaid, if to Seller, addressed to Seller, attention of the President, 219 East 42nd Street, New York, N. Y. 10017; and if to Buyer, addressed to Buyer, attention of the President, 230 Park Avenue, New York, N. Y. 10017.

(e) This Agreement shall be governed by the internal law of the State of New York.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and their respective corpo-

349a
Exhibit JE 244

rate seals to be affixed hereto, all as of the day and year first above written.

RAILWAY EXPRESS AGENCY, INCORPORATED,

by _____
President

Attest:

_____
Secretary

INTEGRATED CONTAINER SERVICE, INC.,

by _____
President

Attest:

_____
Secretary

Attachment E

350a
Exhibit JE 244

Mr. Alan Goldman
Vice President Finance
Interway Corp.
555 Fifth Ave.
New York, N. Y. 10017

June 14, 1971

Dear Mr. Goldman:

Confirming our verbal notification and in accordance with letter agreement dated October 11, 1968 between Interway and RMA Express Inc. please be advised that by official Board of Director action Interway is requested to register 153,041 shares of common stock. (As converted on a 1 to 1.5 ratio of preferred stock).

This will also confirm our scheduled meeting with Interway management at 9:30 AM, June 17 to discuss this matter.

Sincerely yours,

ORIGINAL SIGNED
IRVIN B. JENKINS

BEST COPY AVAILABLE

Attachment C

351a
Exhibit JE 244

Mr. Alan I. Goldman
Vice President - Finance
Interway Corporation
555 Fifth Ave.
New York, N. Y. 10017

June 24, 1971

Dear Mr. Goldman:

In response to your letter of June 18, 1971 I have reviewed your request with the majority of the Board of Directors.

This was done as a matter of expediency since our next Board meeting is not scheduled until July 20.

The concensus of those solicited was that I should continue to press ICSI (Interway) for the registration requested in my letter dated June 14 or in lieu thereof propose a solution to the problem that could be considered by the Board

This will confirm our meeting at 9:30 this date and I look forward to your early response.

Sincerely,

ORIGINAL SIGNED
IRVIN B. JENKINS

352a
Exhibit JE 244

INTERWAY CORPORATION

555 FIFTH AVENUE
NEW YORK, N.Y. 10017

July 1, 1971

Mr. Irvin B. Jenkins, Vice President
REA Express
219 East 42nd Street
New York, N. Y. 10017

Dear Irv:

Interway's Counsel tells me that your letter of June 14, 1971, is not sufficient for two reasons:

1) Interway's stock records indicate that its outstanding convertible preferred issued to REA for the acquisition of a portion of REALCO is currently held in the names of Carr & Co. (79, 020½ shares) and Kugler & Co. (79, 020½ shares). The written consent of these holders to your request for registration of the common shares into which the preferred is convertible is necessary.

2) The convertible preferred must be converted into common shares before further efforts can proceed to register the common stock. If you will tender the preferred certificates to this office, Interway will issue you certificates for the common shares.

I would also like to mention in connection with the alternative course of action set forth in your letter of June 24, 1971, that in lieu of a registration, we will continue to work with you on a proposed solution to the problem for consideration by your Board at its July 20th meeting.

Sincerely,

Alan

AIG:LD

Alan I. Goldman
Vice President - Finance

Mr. A. N. Wischart --

For your information.

I. B. Jenkins
7/13

353a
Exhibit JE 244

July 28, 1971

Interway Corporation
555 Fifth Avenue
New York, New York 10017

Attention: Mr. Robert E. Buderick,
President

Re: REA Demand for Registration

Dear Sirs:

REA has decided that in all the circumstances it will as an exigency attempt to obtain a no-action letter from the Securities and Exchange Commission relating to its sale of Interway Common Stock. However, as you know, REA has demanded that a registration statement be filed with respect to such sales, and they expect you to proceed with all due diligence on that registration statement while they are pursuing the no-action route.

In response to your letter of July 1, 1971, we do not consider REA's demand for a registration of the shares of Interway Common Stock into which their shares of Interway Preference Stock are convertible to be in any way defective. While we do not feel it is necessary, we

are in the course of obtaining the consent of the person for whom Kugler & Co. is a nominee to the registration and conversion of the 79,020 1/2 shares now standing in that name. Since the person previously having a beneficial interest in the 79,020 1/2 shares registered in the name of its nominee, Carr & Co., no longer has such interest, and the certificate for such shares has been delivered to REA duly endorsed and is presently held by REA, there will be no occasion for obtaining any consent from any other person as regards these shares.

In connection with your request that the Preference Stock be first converted and then a demand made for registration, we see absolutely no basis whatsoever for such a conversion-first approach in any of the documents relating to the Preference Stock and its registration rights. You will recall, of course, that in connection with the 1969 public offering no conversion of the then ISCI Preference Stock was made until after the effective date of the registration statement.

In fact, the documents relating to conversion and registration of the Preferred Stock support the opposite conclusion, that no conversion is possible until

the shares can be sold either in a registered public offering or pursuant to an exemption from the registration requirements of the Securities Act of 1933. See specifically in this regard the language in your Amended Certificate of Incorporation, paragraph (c) of Article Fourth:

> "Shares of Preference Stock shall be convertible at the option of the holders thereof . . . provided . . . that such conversion rights may be exercised by a holder of 30,000 . . . shares or more of Preference Stock other than holders who are financial institutions or other institutional investors only for the purposes of (1) making a registered public offering of the Common Stock received on conversion or (2) making sales of such Conversion Stock exempt from the registration requirements of the Securities Act of 1933, as amended . . . by virtue of Section 4(4) or a successor provision . . . ."

We think you will agree that the most common practice in this field is to delay conversion until immediately prior to sale, either pursuant to a registration statement or otherwise. To convert prior to that time may prejudice REA's rights, and there is no reason why they should be required to give up their Preference position in order to demand a registration statement.

In view of this, we insist that you commence forthwith in the preparation of a registration statement pursuant to the agreements previously made between you and REA. We feel that your letter of July 1, 1971 was merely a delaying tactic and we will consider the time from REA's original letter of June 14, 1971 in calculating the time you have been taking to prepare the registration statement.

Sincerely yours,

Donald A. Kerner

cc: Dennis J. Kenny, Esq.
General Counsel and
Assistant Secretary
Interway Corporation

Arthur M. Wiechart, Esq.
Vice President and
General Counsel
REA Express

Exhibit JE 244

[REA Letterhead]

August , 1971

Interway Corporation
555 Fifth Avenue
New York, New York 10017

Attention: Mr. Robert E. Budorick,
President

Dear Sirs:

We enclose a copy of a "no-action letter which we have decided to file with the Securities and Exchange Commission in connection with our sale of Interway Common Stock. We do not feel that this "no-action" request in any way affects your obligation to register the stock. We consider that you are in default with respect to that obligation. We intend to hold you responsible for any of REA's damages resulting from such delay.

Very truly yours,

REA EXPRESS

By_____

Attachment E

358a
Exhibit JE 244

INTERWAY CORPORATION

555 FIFTH AVENUE
NEW YORK, N.Y. 10017

ANDERSON & ALLEGAERT

AUG 16 1971

TELEPHONE
(212) 697-6709

August 12, 1971

Anderson & Allegart
345 Park Avenue
New York, N.Y. 10022

Attention: Donald A. Herner

Gentlemen:

We are in receipt of your letter of July 28, 1971 addressed to the attention of Mr. Robert E. Budorick. Our delay in responding was occassioned by the necessity of our first ascertaining from REA, your authority to represent REA in matters other than its attempt to secure a "no-action" letter from the S.E.C. As you know, Mr. Wisehart of REA gave me your name and advised me that you had been retained to make efforts to secure a "no-action" letter. I was given no indication that the scope of your representation extended to the matters referred to in your July 28th letter. Mr. Irvin-B. Jenkins of REA has now responded by letter of August 4th advising us that your firm has been retained to represent REA in all matters pertaining to "the obtaining of a no-action letter, conversion of ICSI stock and the registration of same".

We have carefully reviewed the contents of your letter. While we will agree that REA's pursuit of a no-action letter does not in any way obviate any obligation Interway may have to register the common stock into which the presently held preference stock is convertible, we do maintain that we are entitled to demand that REA furnish a proper notice of request to register. In our letter of July 1, 1971 to REA we pointed out why the request was not proper. Our position remains the same.

We look forward to the receipt of the consent by the person for whom Kugler & Co. is nominee. We would also want to see the certificates issued in the name of Carr & Co. to satisfy ourselves that Carr & Co. no longer has any interest in the shares represented thereby and that they are now held by REA.

We must take issue with your position on our requirement that REA first convert before requesting registration. The March 1969 offering was not made at the request of REA but rather at the initiative of Integrated Container Service Industries. As required under our letter agreement with REA we offered REA the right to join in as a selling shareholder. Even if REA has backed out of that registration and decided not to sell the common stock, ICSI would have gone ahead with that registration for its own benefit. Since we do not intend at this time to make a public offering, the costs and expenses of any registration requested by REA would be solely for the benefit of REA. If REA were to back out and not convert to common, those costs and expenses would not be recoverable. For this reason, we see no analogy between the March, 1969 offering and REA's present request.

We must also differ with you on your interpretation of our Certificate of Incorporation when you state that "no conversion is possible until the shares can be sold..."The language of the Certificate provides that "Preference Stock shall be convertible... only for purposes of (1) making a registered public offering of the Common Stock received on conversion..."Contrary to your position we interpret this language to mean that the preference stock is convertible if the intent of the holder is to register the common into which the preference stock is converted and consequently conversion only requires the intent to register the common stock, which in this case can be manifested by an appropriate request for registration.

Even assuming you are correct on what the most common practice is in this field, that practice would not apply in this case because of the language of the Certificate of Incorporation and the fact that Interway must pay the costs of any REA registration request.

We do not see how REA's rights are prejudiced by this procedure. On the other hand we can see how Interway could be prejudiced under your suggested procedure if REA decided not to convert after Interway had made substantial expenditures prepairing the registration material.

We are disturbed by your suggestion that our letter of July 1, 1971 was a delaying tactic. It was, we feel, a prompt response to REA's letter of June 14, 1971, pointing out the deficiencies of that letter. We would appreciate further word from you as to how and when these conditions will be met.

I would also be interested in knowing the status of REA's no-action letter.

Very truly yours,

Dennis J. Kenny
General Counsel

DJK:ab

Attachment E

361a
Exhibit JE 244

INTERWAY CORPORATION

555 FIFTH AVENUE
NEW YORK, N.Y. 10017

ANDERSON & ALLEGAERT

AUG 1 3 1971

TELEPHONE
(212) 697-6709

August 12, 1971

Anderson & Allegart
345 Park Avenue
New York, N.Y. 10022

Attention: Donald A. Herner

Gentlemen:

We are in receipt of your letter of July 28, 1971 addressed to the attention of Mr. Robert E. Budorick. Our delay in responding was occassioned by the necessity of our first ascertaining from REA, your authority to represent REA in matters other than its attempt to secure a "no-action" letter from the S.E.C. As you know, Mr. Wisehart of REA gave me your name and advised me that you had been retained to make efforts to secure a "no-action" letter. I was given no indication that the scope of your representation extended to the matters referred to in your July 28th letter. Mr. Irvin-B. Jenkins of REA has now responded by letter of August 4th advising us that your firm has been retained to represent REA in all matters pertaining to "the obtaining of a no-action letter, conversion of ICSI stock and the registration of same".

We have carefully reviewed the contents of your letter. While we will agree that REA's pursuit of a no-action letter does not in any way obviate any obligation Interway may have to register the common stock into which the presently held preference stock is convertible, we do maintain that we are entitled to demand that REA furnish a proper notice of request to register. In our letter of July 1, 1971 to REA we pointed out why the request was not proper. Our position remains the same.

We look forward to the receipt of the consent by the person for whom Kugler & Co. is nominee. We would also want to see the certificates issued in the name of Carr & Co. to satisfy ourselves that Carr & Co. no longer has any interest in the shares represented thereby and that they are now held by REA.

We must take issue with your position on our requirement that REA first convert before requesting registration. The March 1969 offering was not made at the request of REA but rather at the initiative of Integrated Container Service Industries. As required under our letter agreement with REA we offered REA the right to join in as a selling shareholder. Even if REA has backed out of that registration and decided not to sell the common stock, ICSI would have gone ahead with that registration for its own benefit. Since we do not intend at this time to make a public offering, the costs and expenses of any registration requested by REA would be solely for the benefit of REA. If REA were to back out and not convert to common, those costs and expenses would not be recoverable. For this reason, we see no analogy between the March, 1969 offering and REA's present request.

We must also differ with you on your interpretation of our Certificate of Incorporation when you state that "no conversion is possible until the shares can be sold..." The language of the Certificate provides that "Preference Stock shall be convertible... only for purposes of (1) making a registered public offering of the Common Stock received on conversion..." Contrary to your position we interpret this language to mean that the preference stock is convertible if the intent of the holder is to register the common into which the preference stock is converted and consequently conversion only requires the intent to register the common stock, which in this case can be manifested by an appropriate request for registration.

Even assuming you are correct on what the most common practice is in this field, that practice would not apply in this case because of the language of the Certificate of Incorporation and the fact that Interway must pay the costs of any REA registration request.

We do not see how REA's rights are prejudiced by this procedure. On the other hand we can see how Interway could be prejudiced under your suggested procedure if REA decided not to convert after Interway had made substantial expenditures prepairing the registration material.

We are disturbed by your suggestion that our letter of July 1, 1971 was a delaying tactic. It was, we feel, a prompt response to REA's letter of June 14, 1971, pointing out the deficiencies of that letter. We would appreciate further word from you as to how and when these conditions will be met.

I would also be interested in knowing the status of REA's no-action letter.

Very truly yours,

Dennis J. Kenny
General Counsel

DJK:ab

364a
Exhibit JE 246

Joint Exhibit 246

3-12-72

EXHIBIT
U. S. DIST. COURT
S. D. OF N.Y.

INTERWAY CORPORATION

555 FIFTH AVENUE
NEW YORK, N.Y. 10017

DENNIS J. KENNY
GENERAL COUNSEL

TELEPHONE
(212) 697-6709

September 24, 1971

Arthur M. Wisehart, Esq.
Vice President & General Counsel
REA Express
219 East 42nd Street
New York, New York 10017

Dear Mr. Wisehart:

This letter is given at REA's request in connection with the Stipulation and Agreement of Settlement and Compromise in Weinberger et al. versus Integrated Container Service Industries Corporation et al. 69 Civ. 2284, United States District Court for the Southern District of New York and it is understood that REA will rely on this letter in authorizing its attorney to sign said Stipulation on its behalf.

This is to advise that with respect to the Preferred Stock, par value $1 per share of Interway Corporation in which REA has an interest, if any, said Stipulation in no way will prejudice or limit whatever rights or claims REA may have respecting said stock or its acquisition, including without limitation the claim which it has asserted for the registration of the Common Stock into which said Preferred Stock may be converted.

Very truly yours,

INTERWAY CORPORATION

By Dennis J. Kenny
General Counsel

365a
Exhibit JE 248

Arthur M. Wisehart
General Counsel
and Corporate Secretary

REA Express

219 East 42nd Street
New York, NY 10017
Tel 212 557 8900

Joint Exhibit 248

October 12, 1971

Certified Mail -
Return Receipt Requested

Interway Corporation
555 Fifth Ave.
New York, N. Y. 10017

Dear Sirs:

Enclosed herewith is a copy of the "no action letter" filed with the Securities and Exchange Commission on or about September 1, 1971 on behalf of REA by Anderson, Allegaert & Russell.

Please be advised that the submission of such letter to the SEC is without effect on our request to your company dated June 14, 1971, pursuant to the terms of the Letter Agreement between us dated October 11, 1968, that you proceed to (i) register sufficient shares of your common stock for conversion thereto of all our shares of your preference stock and (ii) make the conversion.

Your response to date to this request constitutes a default on your obligation under the Letter Agreement of October 11, 1968. You will be held responsible for REA's damages resulting from such delay.

Sincerely,

Arthur M. Wisehart

Arthur M. Wisehart

366a
Exhibit JE 249

Joint Exhibit 249

INTERWAY CORPORATION

555 FIFTH AVENUE
NEW YORK, N.Y. 10017

DENNIS J. KENNY
GENERAL COUNSEL

TELEPHONE
(212) 697-6709

October 19, 1971

Registered
Return Receipt Requested

Arthur M. Wisehart, Esq.
Vice President & General Counsel
REA Express
219 East 42nd Street
New York, New York 10017

Dear Mr. Wisehart:

We are in receipt of your letter of October 12, 1971, together with a copy of REA's letter request to the SEC for a no action letter. We trust you will keep us advised of further developments.

With respect to the last paragraph of your letter, I would point out that REA has not fulfilled the conditions precedent for a proper request to register which we pointed out in our letter of July 1, 1971, to Mr. Irvin B. Jenkins and consequently, we must disagree with your assertion that this Corporation is in default under the Letter Agreement of October 11, 1968.

Very truly yours,

Dennis J. Kenny

DJK/ck

RAB has seen this.

367a
Exhibit JE 250

...nart
...sci
Secretary

REA Express

219 East 42nd Street
New York, NY 10017
Tel 212 557 8800

Joint Exhibit 250

October 21, 1971

Dennis J. Kenny, Esq.
General Counsel
Interway Corporation
555 Fifth Avenue
New York, N.Y. 10017

Dear Mr. Kenny:

Concerning your letter of October 19, 1971 please be advised that, in the opinion of independent counsel, what you refer to as "conditions precedent" to our request for registration of your company's stock are not in fact conditions precedent to such request, and that such request has been properly made. Therefore, your company proceeds at its peril in disregarding said request.

Sincerely,

Arthur M. Wisehart

Arthur M. Wisehart

RECEIVED
OCT 26 1971

Exhibit JE 251

COURT EXHIBIT 251

EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

DIVISION OF
CORPORATION FINANCE

ANDERSON & ALLEGAERT

NOV 1 - 1971

OCT 29 1971

Donald A. Herner, Esq.
Anderson & Allegaert
345 Park Avenue
New York, New York 10022

Re: Interway Corporation

Dear Mr. Herner:

This is with reference to your letter of August 31, 1971 concerning the proposed sale without compliance with the registration requirements of the Securities Act of 1933 ("the Act") by REA Express Inc. of 237,061 shares of common stock of the above referenced company into which REA plans to convert 158,041 shares of Interway preference stock presently held by REA which were acquired in June 1969 except for 14,368 shares which were acquired as a result of a subsequent stock dividend.

On the basis of the facts presented, this Division is unable to conclude that the shares in question may be publicly sold at this time without compliance with the registration requirements of the Act. In light of the period of time REA has owned the shares, the facts presented are insufficient to establish that REA would not be considered an underwriter within the meaning of Section 2(11) of the Act if the shares were publicly sold at this time.

Sincerely,

John Heneghan
Deputy Chief Counsel

369a
Exhibit JE 252

3-13-2

Joint Exhibit 252
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

November 16, 1971

Dennis J. Kenny, Esq.
General Counsel
Interway Corporation
555 Fifth Avenue
New York, N.Y. 10017

Dear Mr. Kenny:

Enclosed for your information is a copy of the denial by the S.E.C. of the request by REA for a "no action" letter. In view of this development, you may be assured that we intend to pursue aggressively our demand for registration, previously asserted on June 14, 1971.

Sincerely,

Arthur M. Wisehart

bcc R. A. Burman
D. Herner

252

370a
Exhibit JE 252

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

DIVISION OF
CORPORATION FINANCE

ANDERSON & ALLEGAERT

NOV 1 - 1971

OCT 29 1971

Donald A. Herner, Esq.
Anderson & Allegaert
345 Park Avenue
New York, New York 10022

Re: Interway Corporation

Dear Mr. Herner:

This is with reference to your letter of August 31, 1971 concerning the proposed sale without compliance with the registration requirements of the Securities Act of 1933 ("the Act") by REA Express Inc. of 237,061 shares of common stock of the above referenced company into which REA plans to convert 158,041 shares of Interway preference stock presently held by REA which were acquired in June 1969 except for 14,368 shares which were acquired as a result of a subsequent stock dividend.

On the basis of the facts presented, this Division is unable to conclude that the shares in question may be publicly sold at this time without compliance with the registration requirements of the Act. In light of the period of time REA has owned the shares, the facts presented are insufficient to establish that REA would not be considered an underwriter within the meaning of Section 2(11) of the Act if the shares were publicly sold at this time.

Sincerely,

John Heneghan
Deputy Chief Counsel

Joint Exhibit 268

371a
Exhibit JE 268

Mr. Penne G. Hope
Corporate Trust Officer
Morgan Guaranty Trust Company
of New York
15 Broad Street
New York, N. Y.

Indenture of Mortgage and Deed of
Trust dated June 30, 1962 as Amended:
Railway Express Agency, Incorporated
to Morgan Guaranty Trust Company of
New York and Taylor C. Kaiser, Trustees

Dear Mr. Hope:

I refer to the 70,231 shares of convertible preference stock of Interway Corporation (formerly Integrated Container Service Industries, Inc.) comprising part of the trust estate under the above Indenture and currently standing in the name of the corporate trustee's nominee, Kuhler & Co.

Pursuant to the terms of the issuer's Certificate of Incorporation and the agreement with REA by means by which the latter acquired the stock, Interway is obligated on the request of REA to register for public offering so many shares of its common stock as will allow conversion thereto of as many preference shares as REA wishes to convert. REA on June 14, 1971 formally requested Interway to register for public offering enough shares of its common for conversion thereto of all REA's preference stock.

Interway has demanded in reply that a consent be furnished on behalf of Kuhler & Co. to (i) the registration for public offering of sufficient shares of Interway common stock for conversion thereto of the 70,231 shares of preference stock in the name of Kuhler & Co., and (ii) the conversion of such preference stock to such common stock. Such consent should be given formally by Morgan Guaranty Trust Company and you individually as trustees. A form of consent is enclosed. Your readiness to execute it no doubt

BEST COPY AVAILABLE

268

will depend on the desires of Equitable, the noteholder. If you have any questions please telephone me.

Yours sincerely,

Robert A. Burman

cc: I. B. Jenkins, REA Express

William A. McCardy, The Equitable Life Assurance Society

Exhibit JE 268

268

CONSENT

WHEREAS, pursuant to the terms of the Third Supplemental Indenture dated December 15, 1968 from Railway Express Agency, Incorporated (the Company) to Morgan Guaranty Trust Company of New York and Wesley G. Baker as trustees (the Trustees), amending and supplementing the Indenture of Mortgage and Deed of Trust dated June 30, 1962 as amended and supplemented from the Company to the Trustees, 79,020½ shares of convertible preference stock of Integrated Container Service Industries Corporation owned by the Company are pledged unto the Trustees; and

WHEREAS, said shares are now registered in the name of Kugler & Co., a nominee of Morgan Guaranty Trust Company of New York as corporate trustee under said Indenture as amended and supplemented; and

WHEREAS, said shares are convertible into shares of common stock of the issuer for purposes of a registered public offering or for sales of said shares exempt from the registration requirements of the Securities Act of 1933 as amended; and

WHEREAS, the Company pursuant to the terms of its agreement of October 11, 1968 with the issuer has requested the issuer to register so many shares of its common stock as will permit the conversion thereto of all the Company's shares of its convertible preference stock and to effect such conversion;

NOW THEREFORE, Morgan Guaranty Trust Company of New York as corporate trustee, and Deane G. Hope as successor individual trustee to Wesley G. Baker, under said Indenture as amended and supplemented, hereby consent to (i) the registration by Interway Corporation, formerly Integrated Container Service Industries Corporation, of so many shares of its common stock as will permit the conversion thereto of 79,020½ shares of its convertible preference stock standing in the name of Kugler & Co., and (ii) the conversion of said shares of preference stock to said shares of registered common stock, or (iii) the conversion of said shares of preference stock to shares of common

stock for sales exempt from the registration requirements of the Securities Act of 1933 as amended.

MORGAN GUARANTY TRUST COMPANY
OF NEW YORK

By: _____

_____
DEANE G. HOPE

Trustees

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

On this day of , 1971, before me personally came , to me known, who, being by me duly sworn, did depose and say that he is an officer, to wit, a , of Morgan Guaranty Trust Company of New York, the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

_____

Joint Exhibit 301

EXHIBIT HP

NUMBER 4

SHARES 71,836-1

Incorporated Under the Laws of the State of Delaware

INTEGRATED CONTAINER SERVICE INDUSTRIES CORPORATION

This Certifies that KUGLER & CO. is the owner of
SEVENTY-ONE THOUSAND EIGHT HUNDRED THIRTY-SIX AND ONE-HALF Preference Shares of the ~~Capital Stock~~ of
THE PAR VALUE OF $1.00 PER SHARE OF
INTEGRATED CONTAINER SERVICE INDUSTRIES CORPORATION
transferable only on the books of the Corporation by the holder hereof, in person or by duly authorized Attorney upon surrender of this Certificate properly endorsed.

In Witness Whereof, the said Corporation has caused this Certificate to be signed by its duly authorized officers and to be sealed with the Seal of the Corporation this Sixteenth day of July A.D. 1969

Secretary

By

President

Exhibit JE 301

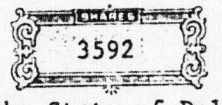
ASSIGNMENT SEPARATE FROM CERTIFICATE — MORGAN GUARANTY TRUST COMPANY OF NEW YORK

For Value Received, _____ hereby sell, assign and transfer unto

[ ] ~~XXXX

377a
Exhibit JE 301

NUMBER 6



SHARES 3592

Incorporated Under the Laws of the State of Delawa

INTECRATED CONTAINER SERVICE INDUSTRIES CORPORATION

This Certifies that KUGLER & CO. is the owner of

THREE THOUSAND FIVE HUNDRED NINETY-TWO PREFERENCE Shares of the Capital Stock of THE PAR VALUE OF $1.00 PER SHARE OF INTEGRATED CONTAINER SERVICE INDUSTRIES CORPORATION

transferable only on the books of the Corporation by the holder hereof in person or by duly authorized Attorney upon surrender of this Certificate properly endorsed.

In Witness Whereof, the said Corporation has caused this Certificate to be signed by its duly authorized officers and to be sealed with the Seal of the Corporation this First day of November, A.D. 1969

Secretary

President

Exhibit JE 301

ASSIGNMENT SEPARATE FROM CERTIFICATE

MORGAN GUARANTY TRUST COMPANY OF NEW YORK

For Value Received, _____ hereby sell, assign and transfer unto

	~~AUTOMATED CONTAINER SERVICE INDUSTRIES CORPORATION~~
TAXPAYER IDENTIFYING NUMBER	(PRINT OR TYPEWRITE NAME AND ADDRESS OF TRANSFEREE)

_____

_____

CITY STATE ZIP CODE

_____ (3,592) Shares of the Preference ~~Capital~~ Stock of the

INTEGRATED CONTAINER SERVICE INDUSTRIES CORPORATION

standing in _____ name on the books of said _____ represented by

Certificate No. 6 herewith and do hereby irrevocably constitute and appoint

_____ attorney to transfer the said stock

on the books of the within named Company with full power of substitution in the premises.

Dated _____

_____
(PERSON EXECUTING THIS POWER SIGN HERE)

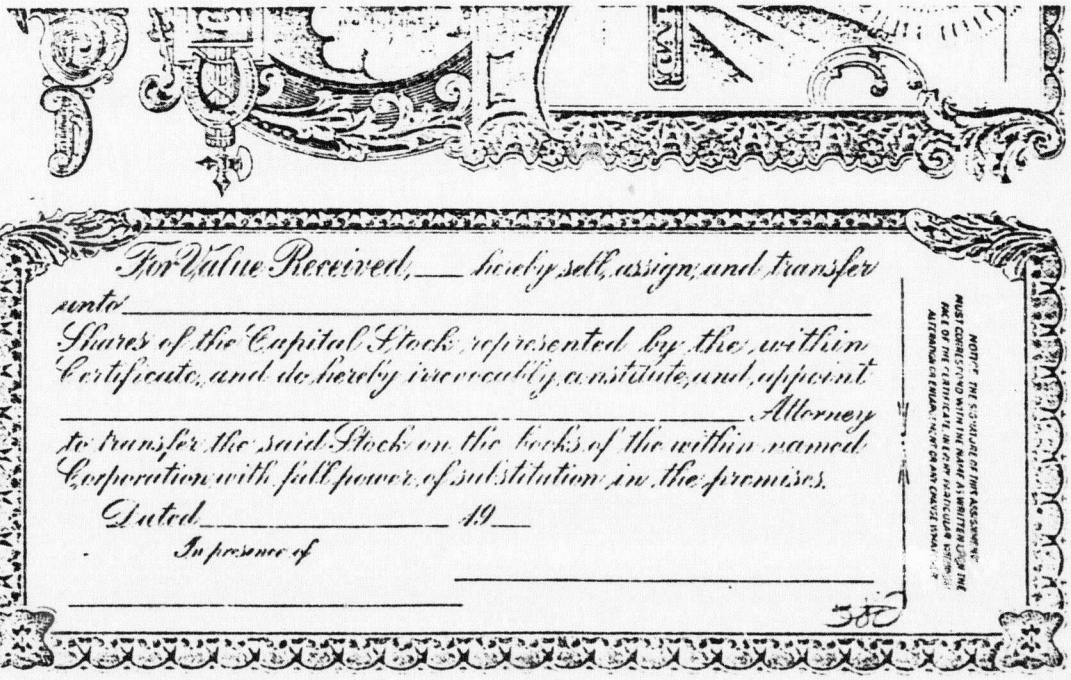
MORGAN GUARANTY TRUST COMPANY
Signature Guaranteed
CORPORATE TRUST DIVISION

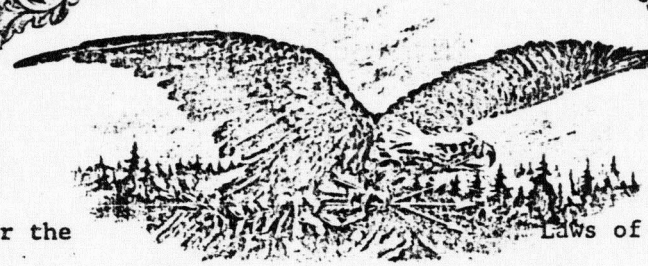
By _____
AUTHORIZED OFFICER

*IMPORTANT READ CAREFULLY:

The signature to this assignment must correspond with the name as written upon the face of the certificate in every particular without alteration or enlargement or any change whatever. The signature of the person executing this power must be guaranteed by a bank or trust company having an office or correspondent in the City of New York, or by a firm of brokers having membership in the New York Stock Exchange or American Stock Exchange Clearing Corporation.

6-65-7500 FORM 35-4-406





NUMBER 7

SHARES 75,428½

Incorporated Under the Laws of the State of Delaware

This Certifies that CARR & CO. is the owner of

Seventy-Five Thousand Four Hundred Twenty-Eight and One-Half PREFERENCE Shares of the ~~Capital~~ Stock of

THE PAR VALUE OF $1,00 PER SHARE OF INTEGRATED CONTAINER SERVICE INDUSTRIES CORPORATION

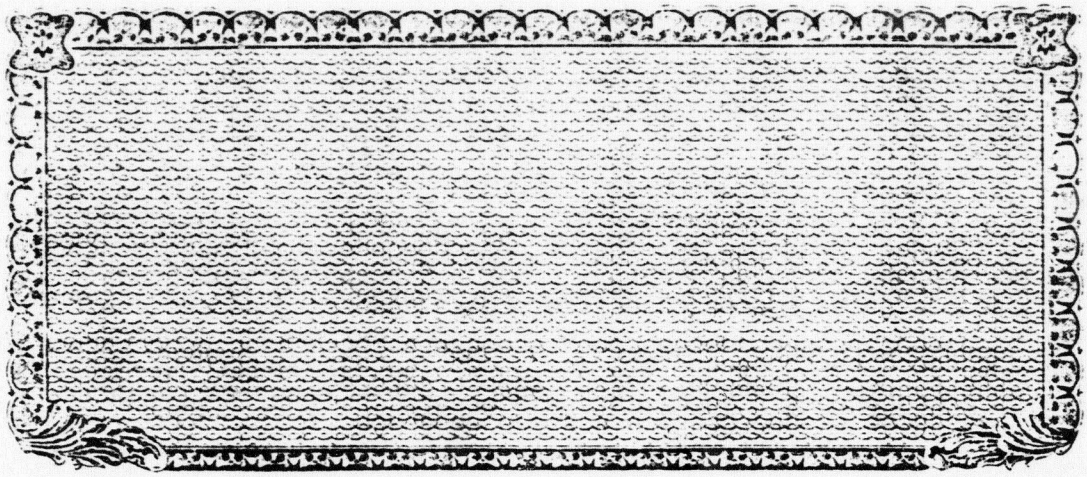
transferable only on the books of the Corporation by the holder hereof in person or by duly authorized Attorney upon surrender of this Certificate properly endorsed.

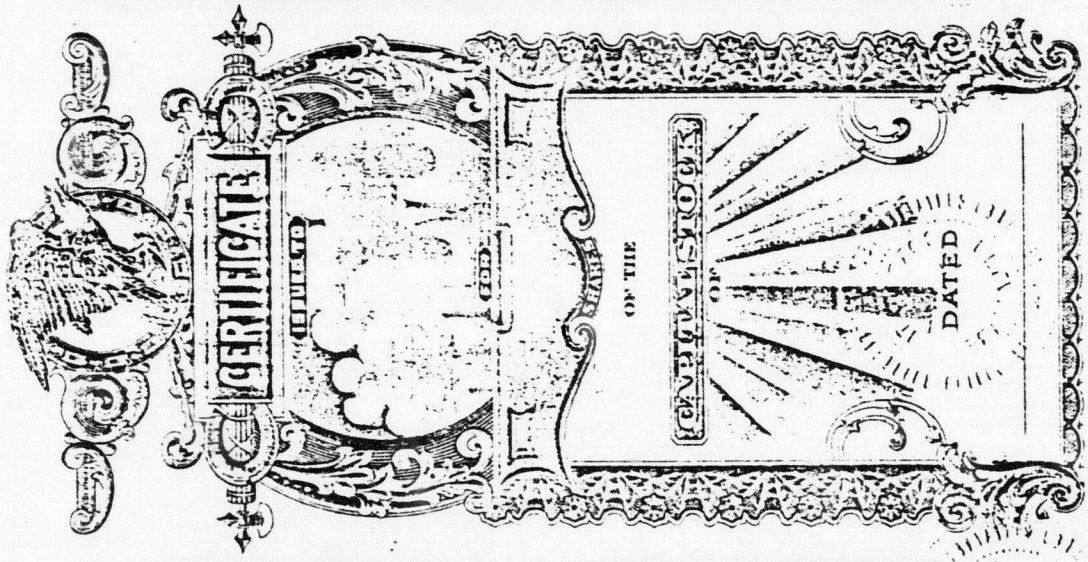
In Witness Whereof, the said Corporation has caused this Certificate to be signed by its duly authorized officers and to be sealed with the Seal of the Corporation this 25th day of AUGUST A.D. 1970

Secretary

President

Exhibit JE 301





For Value Received, ___ hereby sell, assign, and transfer unto _____

_____ Shares of the Capital Stock represented by the within Certificate, and do hereby irrevocably constitute and appoint _____ Attorney to transfer the said Stock on the books of the within named Corporation with full power of substitution in the premises.

Dated _____ 19__

In presence of _____

Coan & Co

NOTICE: THE SIGNATURE OF THIS ASSIGNMENT MUST CORRESPOND WITH THE NAME AS WRITTEN UPON THE FACE OF THE CERTIFICATE, IN EVERY PARTICULAR, WITHOUT ALTERATION OR ENLARGEMENT OR ANY CHANGE WHATEVER

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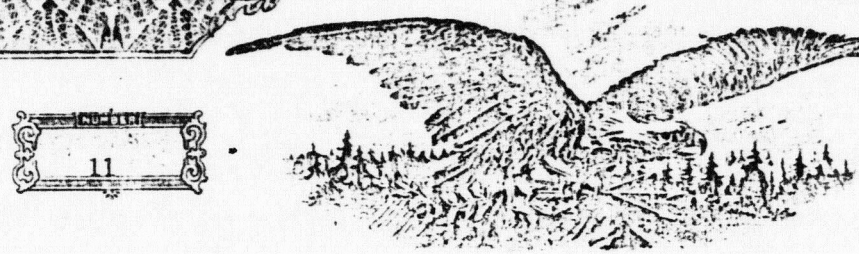
Exhibit JE 301



11

3,592

Incorporated under the Laws of the State of Delaware

INTEGRATED CONTAINER SERVICE INDUSTRIES CORPORATION

This Certifies that KUGLER & CO. is the owner of

Three Thousand Five Hundred Preference
~~Ninety-Two~~ Shares of the Capital Stock of

THE PAR VALUE OF $1.00 PER SHARE OF INTEGRATED CONTAINER SERVICE INDUSTRIES CORPORATION

transferable only on the books of the Corporation by the holder hereof, in person or by duly authorized Attorney upon surrender of this Certificate properly endorsed.

In Witness Whereof, the said Corporation has caused this Certificate to be signed by its duly authorized officers and to be sealed with the Seal of the Corporation this 28th day of January A.D. 1971

Assistant Secretary

President

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Exhibit JE 301

ASSIGNMENT SEPARATE FROM CERTIFICATE — MORGAN GUARANTY TRUST COMPANY OF NEW YORK

For Value Received, _____ hereby sell, assign and transfer unto

[ ] XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

TAXPAYER IDENTIFYING NUMBER — (PRINT OR TYPEWRITE NAME AND ADDRESS OF TRANSFEREE)

_____

_____

CITY — STATE — ZIP CODE

_____ (3,592) Shares of the Preference ~~Capital~~ Stock of the

INTEGRATED CONTAINER SERVICE INDUSTRIES CORPORATION

standing in _____ name on the books of said _____ represented by

Certificate No. 11 _____ herewith and do hereby irrevocably constitute and appoint

_____ attorney to transfer the said stock

on the books of the within named Company with full power of substitution in the premises.

Dated _____

Kuhn & Co.

(PERSON EXECUTING THIS POWER MUST SIGN)

SIGNATURE GUARANTEED

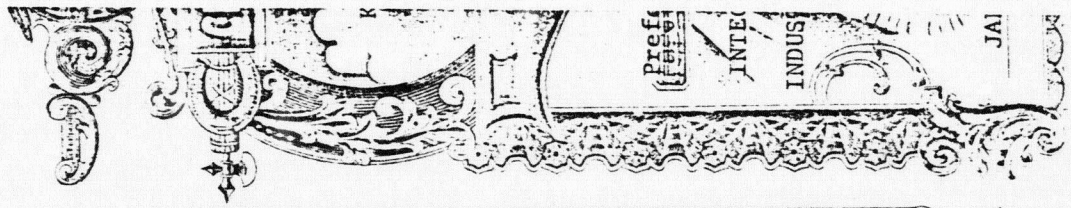
Signature Guaranteed COMPANY OF NEW YORK CORPORATE TRUST DEPT.

By _____

*IMPORTANT READ CAREFULLY:

The signature to this assignment must correspond with the name as written upon the face of the certificate in every particular without alteration or enlargement or any change whatever. The signature of the person executing this power must be guaranteed by a bank or trust company having an office or correspondent in the City of New York, or by a firm of brokers having membership in the New York Stock Exchange or American Stock Exchange Clearing Corporation.

6-65-7500 FORM 35-4-405



For Value Received, ___ hereby sell, assign and transfer unto _____

_____ Shares of the Capital Stock represented by the within Certificate, and do hereby irrevocably constitute and appoint _____ Attorney to transfer the said Stock on the books of the within named Corporation with full power of substitution in the premises.

Dated _____ 19__

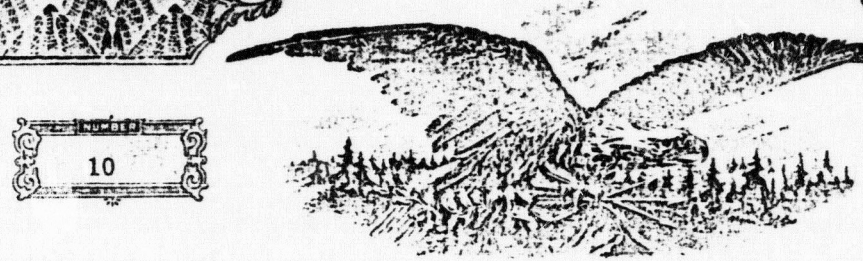
In presence of

_____

_____

NOTICE: THE SIGNATURE TO THIS ASSIGNMENT MUST CORRESPOND WITH THE NAME AS WRITTEN UPON THE FACE OF THE CERTIFICATE, IN EVERY PARTICULAR WITHOUT ALTERATION OR ENLARGEMENT OR ANY CHANGE WHATEVER.

383a
Exhibit JE 301



NUMBER 10

SHARES 3,592

Incorporated under the Laws of the State of Delaware

INTEGRATED CONTAINER SERVICE INDUSTRIES CORPORATION

This Certifies that CARR & CO. is the owner of

Three Thousand Five Hundred ~~Ninety-Two~~ Preferences Shares of the Capital Stock of

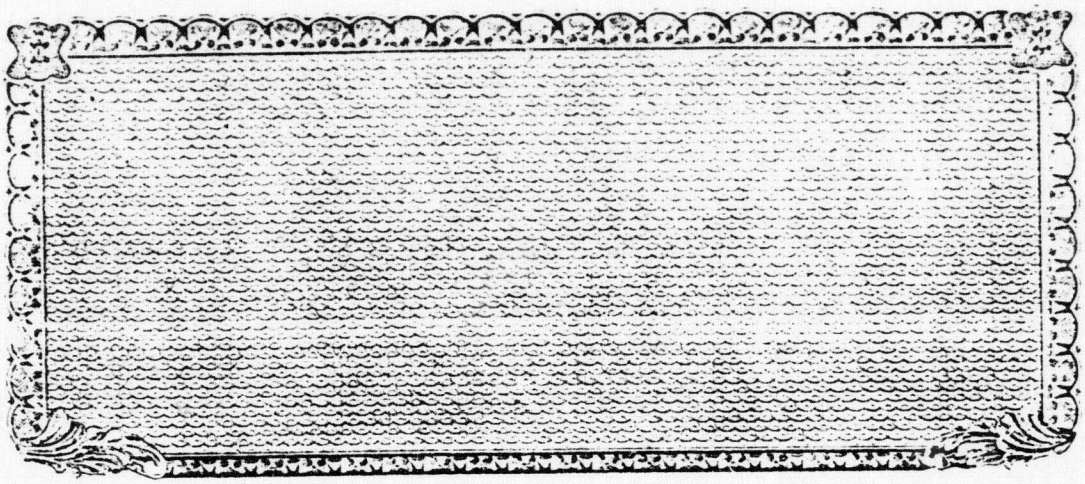
THE PAR VALUE OF $1.00 PER SHARE OF INTEGRATED CONTAINER SERVICE INDUSTRIES CORPORATION

transferable only on the books of the Corporation by the holder hereof in person or by duly authorized Attorney upon surrender of this Certificate properly endorsed.

In Witness Whereof, the said Corporation has caused this Certificate to be signed by its duly authorized officers and to be sealed with the Seal of the Corporation this 28th day of JANUARY A.D. 1971

Assistant Secretary

President



CERTIFICATE

CARR & CO.

3,592

OF THE

Preference STOCK

OF

INTEGRATED CONTAINER SERVICE INDUSTRIES CORPORATION

DATED

JANUARY 28, 1971

For Value Received, ___ *hereby sell, assign, and transfer unto* _____

Shares of the Capital Stock represented by the within Certificate, and do hereby irrevocably constitute and appoint _____ *Attorney to transfer the said Stock on the books of the within named Corporation with full power of substitution in the premises.*

Dated _____ 19__

In presence of

Carr & Co.

_____

_____

NOTICE: THE SIGNATURE(S) TO THIS ASSIGNMENT MUST CORRESPOND WITH THE NAME(S) AS WRITTEN UPON THE FACE OF THE CERTIFICATE, IN EVERY PARTICULAR, WITHOUT ALTERATION OR ENLARGEMENT, OR ANY CHANGE WHATEVER.

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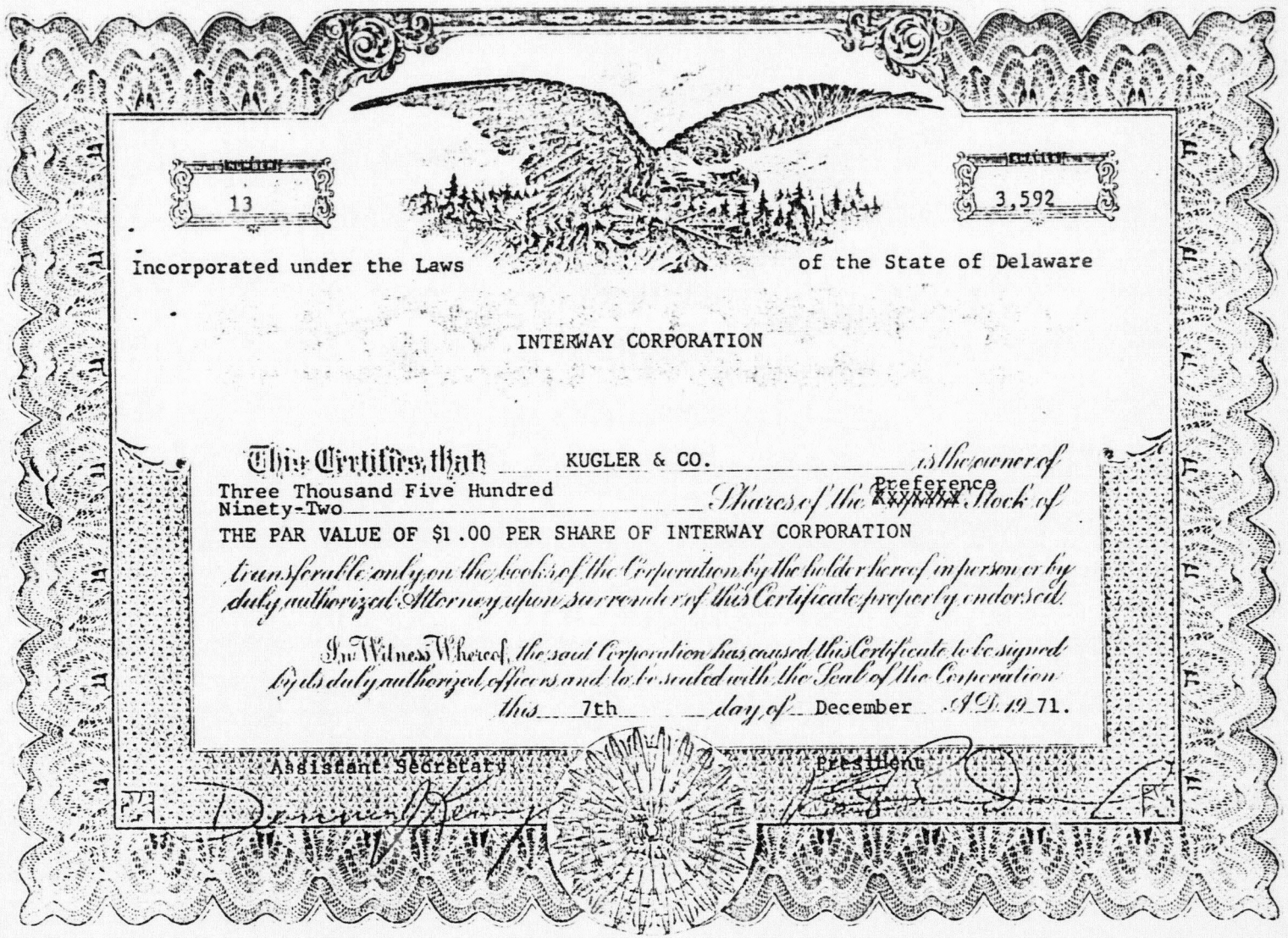
Exhibit JE 301



13

3,592

Incorporated under the Laws of the State of Delaware

INTERWAY CORPORATION

This Certifies that KUGLER & CO. is the owner of

Three Thousand Five Hundred Ninety-Two Preference Shares of the Capital Stock of

THE PAR VALUE OF $1.00 PER SHARE OF INTERWAY CORPORATION

transferable only on the books of the Corporation by the holder hereof in person or by duly authorized Attorney, upon surrender of this Certificate properly endorsed.

In Witness Whereof, the said Corporation has caused this Certificate to be signed by its duly authorized officers and to be sealed with the Seal of the Corporation this 7th day of December A.D. 19 71.

Assistant Secretary

President

Exhibit JE 301

ASSIGNMENT SEPARATE FROM CERTIFICATE

MORGAN GUARANTY TRUST COMPANY OF NEW YORK

For Value Received, _____ hereby sell, assign and transfer unto

TAXPAYER IDENTIFYING NUMBER	(PRINT OR TYPEWRITE NAME AND ADDRESS OF TRANSFEREE)

_____

_____

CITY STATE ZIP CODE

_____ (3,592) Shares of the Preference ~~Capital~~ Stock of the

INTERWAY CORPORATION

standing in _____ name on the books of said _____ represented by

Certificate No. 13 herewith and do hereby irrevocably constitute and appoint

_____ attorney to transfer the said stock

on the books of the within named Company with full power of substitution in the premises.

Dated _____

Kuhn & Co

(PERSON(S) EXECUTING THIS POWER SIGN(S) HERE)

Signature Guaranteed

MORGAN GUARANTY TRUST COMPANY OF NEW YORK

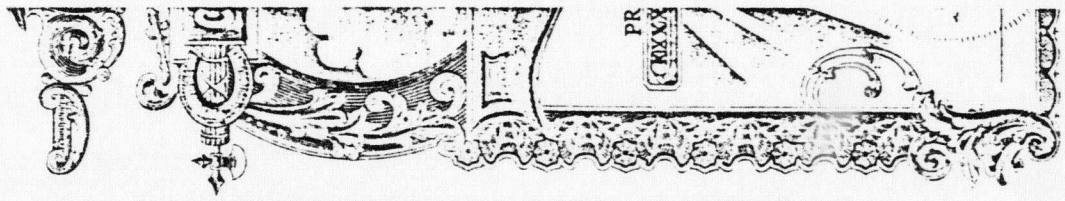
CORPORATE TRUST DIVISION

BY _____

*IMPORTANT READ CAREFULLY:

The signature to this assignment must correspond with the name as written upon the face of the certificate in every particular without alteration or enlargement or any change whatever. The signature of the person executing this power must be guaranteed by a bank or trust company having an office or correspondent in the City of New York, or by a firm of brokers having membership in the New York Stock Exchange or American Stock Exchange Clearing Corporation.

6-65-7500 FORM 35-4-406



For Value Received, ___ *hereby sell, assign, and transfer unto* _____

Shares of the Capital Stock represented by the within Certificate, and do hereby irrevocably constitute and appoint _____ *Attorney to transfer the said Stock on the books of the within named Corporation with full power of substitution in the premises.*

Dated _____ *19*__

In presence of

_____

_____

NOTICE: THE SIGNATURE TO THIS ASSIGNMENT MUST CORRESPOND WITH THE NAME AS WRITTEN UPON THE FACE OF THE CERTIFICATE, IN EVERY PARTICULAR, WITHOUT ALTERATION OR ENLARGEMENT OR ANY CHANGE WHATEVER

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Exhibit JE 301

NUMBER 12

3,592

Incorporated under the Laws of the State of Delaware

INTERWAY CORPORATION

This Certifies that CARR & CO. is the owner of

Three Thousand Five Hundred Ninety-Two Preference Shares of the ~~Capital~~ Stock of

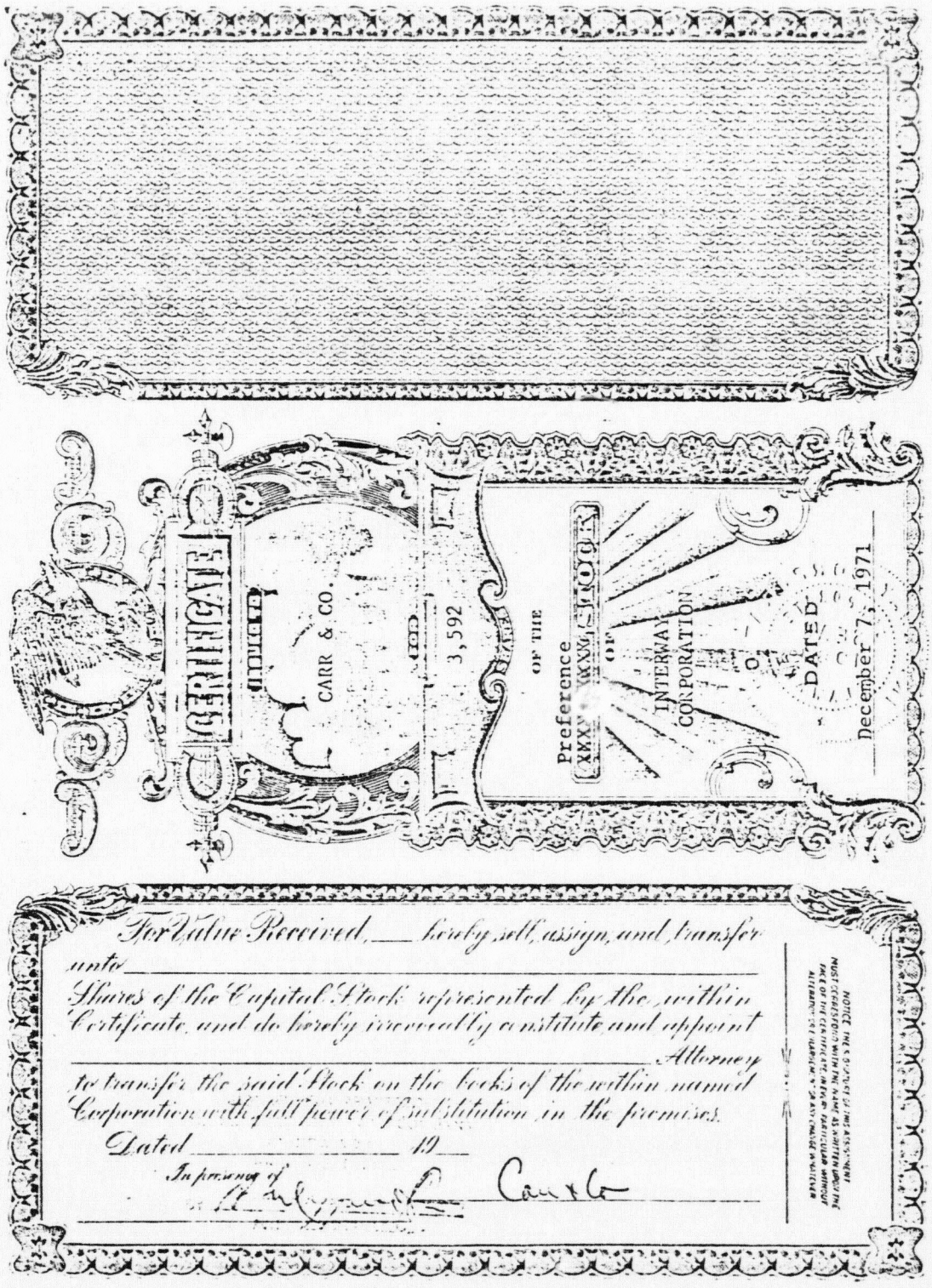
THE PAR VALUE OF $1.00 PER SHARE OF INTERWAY CORPORATION

transferable only on the books of the Corporation by the holder hereof in person or by duly authorized Attorney upon surrender of this Certificate properly endorsed.

In Witness Whereof, the said Corporation has caused this Certificate to be signed by its duly authorized officers and to be sealed with the Seal of the Corporation this 7th day of December A.D. 1971.

Assistant Secretary

President


CERTIFICATE
CARR & CO.
3,592
Preference
OF THE
INTERWAY
CORPORATION
DATED
December 7, 1971
For Value Received, ___ hereby sell, assign, and transfer
unto ___
Shares of the Capital Stock represented by the within
Certificate, and do hereby irrevocably constitute and appoint
___ Attorney
to transfer the said Stock on the books of the within named
Corporation with full power of substitution in the premises.
Dated ___ 19___
In presence of